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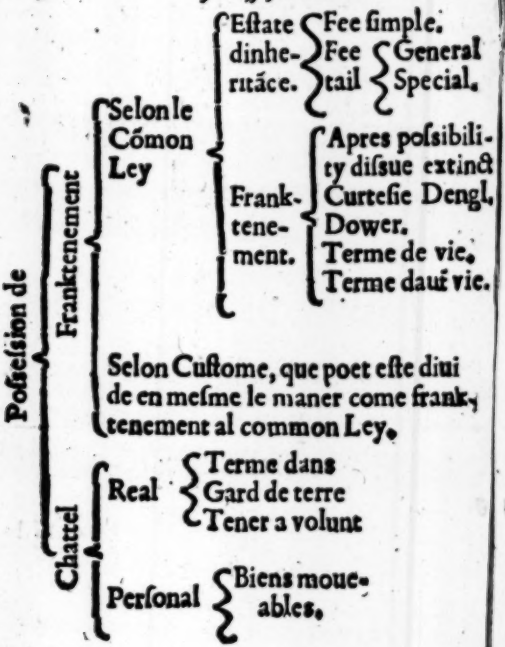
Cum Priuilegio Regiæ
Maiestatis.

TABLE

A figure of the diuision of Possessions.



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TEnant in fée ſimple is he which hath Lands or Tenements to hold to him and to his heires for euer: and it is called in Latin Feodum ſimplex: for Feodum is called inheritaunce, and Simplex is as much to ſay, as lawful or pure, and ſo Feodum ſimplex, is as much to ſay, as lawfull or pure inheritaunce: For if a man will purchaſe landes or tenements in fée ſimple, it behoueth him to haue theſe wordes in his purchaſe, To haue and to hold vnto him and to his heires: for theſe wordes (his heires) make the eſtate of inheritance, Anno 10 Henrici 6. fol. 38. for if any man purchaſe land by theſe wordes: To haue and to hold to him for euer: or by ſuch wordes, To haue and to hold to him and to his aſſignes for euer. In theſe two caſes he hath none eſtate but for terme of life, for that that he lacketh theſe wordes (his heires) which wordes onely make the eſtate of inheritance in all feoffements and grants.

And if a man purchaſe lands in fée ſimple, & die without iſſue, euery one that is his next coſin collaterall, of the whole bloud, how far ſoeuer that he be from him of degrée, may inherit & haue the ſame land as heire vnto him. But if there bee father & ſon, & the father hath a brother which is vncle vnto the ſon, & the ſon purchaſeth lād in fée ſimple, & dieth without iſſue liuing ȳ father, the vncle ſhal haue the land, as

heire vnto the ſonne, and not to the father (yet the father is more nigh of bloud vnto the ſon) for that that there is a ground in the law, that inheritance may lineally deſcend, but not lineally aſcend: yet if the ſon in ſuch caſe die without iſſue, & his vncle entreth into the land as heire vnto the ſon (ſo as he ought by the law) and after if the vncle deceaſe without iſſue living the father, then ſhall the father haue the lād as heire vnto the vncle, & not as heire vnto the ſon, for that that he commeth vnto the land by collaterall diſcent, & not by lineall aſcention.

And in ſuch caſe where the ſon purchaſeth land in fee ſimple, and dieth without iſſue, they of his bloud on the fathers ſide ſhall inherite as heire vnto him, before any of the bloud of the mothers ſide. But if hee haue no heire on the fathers ſide, then ſhall the land deſcend vnto his heire on the mothers ſide. And this is the opinion of the Juſtices Mich. 12. E. 4. fol. 35. But there it was holden if any land deſcend vnto a man by the fathers ſide which dyeth without iſſue, that his next heire on the fathers ſide ſhall inherit vnto him, that is to ſay, the next of bloud of the father of the graundfathers ſide. And for default of ſuch an heire, they that be of the fathers bloud of the part of the mother of the father, (that is to ſay) the graundmother ought to inherite. And if there bee no ſuch heire on the fathers ſide, then the Lord ſhall haue the land by Eſcheate. And ſo it is if a mā take a wife inheritor in fee ſimple,

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which hath iſſue a ſonne and dyeth, and the ſonne entreth into the tenements as ſonne and heire vnto his mother, and after dyeth without iſſue, the heires on the mothers ſide ought to inherite the tenements, and not the heires on the fathers ſide.

And if there bee no heires on the mothers ſide, then the Lord of whome the ſame land is holden ſhall haue the ſame land by eſcheat. In the ſame manner it is if Lands deſcend vnto the ſonne on the fathers ſide, which entreth, & after dieth without iſſue, the land ſhall deſcend vnto the heires on the fathers ſide, & not vnto the heires on the mothers ſide. And if there be none heires on the fathers ſide, then the Lord of whom the land is holden, ſhal haue the ſame land by eſcheat. And ſo ye may ſee the diuerſity, where the ſonne purchaſeth Lands in fee ſimple, and where he commeth vnto thoſe lands or tenements by deſcent on the fathers ſide, or on the mothers ſide.

Alſo, if there be thrée brethren, & the middle brother purchaſeth lād in fee ſimple and dyeth without iſſue, the elder brother ſhal haue the land by deſcent & not the yonger. Alſo if there be three brethren, and the yongeſt brother purchaſeth land in fee ſimple and dyeth without iſſue, the elder brother ſhall haue the land by deſcent, & not the middle brother, for that that the elder brother is more worthy of blood.

And it is to be vnderſtood, that no man ſhal haue land in fee ſimple by deſcēt as heire vnto

any man, vnleſſe hee be his heire of the whole bloud. For if a man haue iſſue two ſonnes by two venters, and the elder purchaſeth land in fee ſimple, and dieth without iſſue, the ponger brother ſhal not haue the land, but the vncle of the elder brother, or ſome other his nigh cosin ſhall haue it, for that that the ponger is but of the halfe bloud to the elder brother. And if a man haue a ſonne and a daughter by one venter, and a ſonne by another venter, & the ſonne by the firſt venter purchaſeth Land in fee ſimple and dieth without iſſue, the ſiſter ſhal haue the Land by diſcent as heire vnto her brother, and not the ponger brother, for that that the ſiſter is of the whole blood to her elder brother.

And alſo where a man is ſeiſed of land in fee ſimple, and he hath iſſue a ſon and a daughter, by one venter, and a ſonne by another venter and dyeth, and the elder ſon entereth, and dyeth without iſſue, the daughter ſhall haue the land and not the ponger ſonne, and yet is the ponger ſon heire vnto his father, but not vnto his brother. But if the elder ſonne enter not into the land after the death of his father, but dieth before entrie be made by him, then the ponger brother may enter and haue the land as heire vnto his father. But where the elder ſonne in the caſe afore ſaid, entreth after the death of his father, and thereof haue poſſeſſion, then the ſiſter ſhal haue the land: Quia poſſeſſio fratris de feodo ſimplici, facit ſororem eſſe hæredem. For the poſſeſſion of the brother in fee ſim-

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ple maketh the sister to be heire.

But if there be two brethrē by diuers venters, and the elder is seised in fee simple and dyeth without issue, and his vncle entreth as heire vnto him, which also dyeth without issue, thē the ponger brother may haue the land as heire vnto his vncle, because hee is of the whole bloud to him, though hee be but of halfe bloud vnto his elder brother.

And it is to bee vnderstoode that this word (Inheritance) is not onely vnderstood where a man hath lands or tenements by descent of heritage: But also euery fee simple or fee taile that a man hath by his purchase, may bee said inheritance, for that that his heires may inherite them. For, in a Writ of Right that a man bringeth of land, that was of his owne purchase, the Writ shall say, Quam clamat esse ius & hæreditatem suam, that is to say, which hee claimeth to bee his right and his inheritance. And so it shall bee said in diuers other Writs which a man or a woman bringeth of their owne purchase, as it appereth by ỹ Register.

And of such things as a man may haue a manuell occupation, possession, or receite, as of Lands, Tenements, Rents, and such other, a man shall say in his pleading, and way of barre, that one such was seised in his demesne as of fee. But of such things as lye not in manuell occupation, &c. as of Aduowson of a Church, and such manner things: there he shal say, that he was seised as of fee, and not in his

demeſne as of fée. And in Latin it is in ꝯ ſame caſe ſaid, Quod talis fuit ſeiſitus in dominico ſuo vt de feodo, that is to ſay, that ſuch a one was ſeiſed in his demeſne as of fée, and in the other, Quod talis fuit ſeiſitus vt de feodo, that is to ſay, that one ſuch was ſeiſed as of fee.

And note well that a man may not haue a more large ne greater eſtate of inheritaunce, then fée ſimple.

Alſo, purchaſe is called ꝯ poſſeſſion of lands or tenements that a man hath by his deede or by his agreément, vnto which poſſeſſion he cõmeth, not by diſcent of any of his anceſtors, or of his coſins, but by his owne deed.

Fee taile.

TEnant in fee taile, is by force of a ſtatute of Weſtminſter the ſecond, capitulo primo: For at the cõmon law before the ſaid ſtatute, all inheritances were fee ſimple. For all the gifts which bin ſpecified within the ſaid ſtatute, were fée ſimple conditionally, as it appeareth by the rehearſall of the ſtatute. And now by the ſame ſtatute tenant in the taile is ſaid in two manners, that is to ſay, tenant in taile generall, and tenant in taile ſpeciall.

Tenant in taile generall, is where Lands or Tenements bee giuen to a man and to his heires of his body begotten: In this caſe it is ſaid generall taile, for that that whatſoeuer woman that the tenant taketh to wife, if hee haue many wiues, and by each of them hath iſſue,

ſſue, yet each one of theſe iſſues by poſſibility may inherite the tenements by force of the ſaid gift, becauſe that euery ſuch iſſue is of his bo-dy ingendred.

In the ſame maner it is where lands & tenements bee giuen to a woman & to the heires comming out of her body, howbeit that ſhee haue many huſbands, yet the iſſue þ ſhee may haue by each huſband, may inherite as iſſue in the taile, by force of ſuch gifts. And therefore ſuch gifts beene called generall taile.

Tenant in taile ſpeciall, is where Lands and Tenements be giuen vnto a man and his wife and the heires of their two bodies begot-ten. In ſuch caſe none may inherite by force of ſuch gift, but thoſe that bee ingendred be-tweene them two, & it is called ſpeciall taile, for that if the wife die, and hee taketh another wife and hath iſſue, the iſſue of the ſecond wife ſhall neuer inherite by force of ſuch gift: Nor alſo the iſſue of the ſecond huſband if the firſt huſband dye.

In the ſame maner it is, where Lands and tenements bee giuen by a man vnto another with a wife, which is the daughter or coſin to the giuer, in Frankmariage, which gift hath inheritance by theſe words (Frankma-riage) vnto it annexed, howbeit that it bee not expreſly ſaid or rehearſed in the gift, that is to ſay, that theſe Doneés ſhall haue theſe Lands or Tenements to them and to their heires betweene them two ingendred, and this

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is ſaid eſpeciall tayle for that the iſſue of the ſecond wife may not inherit.

And note well, that this word Talliare, is to ſay, to ſet vnto ſome certainty, or elſe limit vnto ſome certaine inheritance: And for that that it is limited & ſet in certaine, what iſſue ſhall inherite by force of ſuch giftes, and how long that the inheritance ſhall indure: Therefore it is called in Latin, Feodum talliatum, i. hæreditas in quãdam certitudinẽ limitata. For if tenant in generall taile die without iſſue, the donor or his heires ſhall enter as in their reuerſion: In the ſame wiſe it is of the tenant in the taile ſpeciall, &c. For in euery gift of the taile without more ſaying, the reuerſion of fee ſimple is in the donor.

And the donées and their heires ſhall doe to the donour and to his heires ſuch ſeruices as the donour doth vnto the Lord next aboue: Except the donées in frankemariage, which ſhall hold quietly from euery manner ſeruice, (vnleſſe it bee for Fealty) vntill the fourth degree be paſt. And after that the fourth degree is paſt, the iſſue in the fift degree, and ſo forth the other iſſues after him, ſhall hold of the donour and of his heires as they hold ouer, as is aforeſaid.

And the degrées in franke mariage ſhall be accompted in ſuch manner, that is to ſay, from the donour to the donées in frankmariage the firſt degree, for that that the wife, that is one of the donées, ought to bee daughter, ſiſter, or

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other cosin to the donor: And from the donees vnto their issue shall bee accompted the second degree: And from their issue vnto their issue, the third degree, and so forth, &c.

And the cause is, for that after euery such gift, the issues that come of the donor, and the issues that come of the donees after the fourth degree past of both parties in such fourme to be accompted, may betwixt them by the Law of holy Church intermarrie. And that the donee in frankmariage shall be the first degree of the foure degrees, a man may see in a plea vpon a writ of Right of ward, Anno 31. Edward 3. where the plaintife pleadeth that his ayel or Grandfather was seised of certaine Lands, &c. And that hee held of another by Knights seruice, &c. which gaue the land vnto one Raufe Holland with his sister in frankmariage, &c. And also these tailes before sayd, be specified in the sayd statute of Westminster the second.

And there bee diuers other estates in the tayle, howbeit that they bee not specified by expresse words in the said Estatute, but they be taken by the equity of the Statute: As if Lands be giuen vnto a man and to his heires males of his bodie engendred, in such case his heire male shall inherite, and the issue female shall neuer inherite: yet in these other tailes aforesaid it is otherwise. In the same manner it is if Lands be giuen to a man and to his heires females of his bodie ingendred.

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In this case his issue females shall inherite by force and forme of the said gift, and not the issue male, for that in such cases where the gift is who ought to inherite, and who not, the will of the donor shall be obserued.

And in case where Lands be giuen vnto a man & to his heires males issuing of his body, and he hath issue two sonnes and deceaseth, the elder sonne entreth as heire male, & hath issue a daughter and deceaseth, his brother shall haue the Land and not the daughter, for that the brother is heire male. But it shalbe otherwise in these other tailes aforesaid, which bee specified in the said statute, the daughter shall inherite before the brother.

And if Lands be giuen vnto a man, and to his heires males of his body ingendred, and hee hath issue a daughter, which hath issue a sonne and deceaseth, and after that the donée deceaseth: in this case the sonne of the daughter shall not inherit by force of the taile, for that, whosoeuer shall inherite by force of a gift in the tayle made vnto the heires males, behoueth to conuey his discent alway to the males, Mich. decimo octauo Edwardi tertij fol. 25. But in such case the donor shall enter, for that the donee is dead without issue male in the law. In somuch that the issue of the daughter may not conuey to him the descent by heire male. And in the same maner it is where lands be giuen to a man, and to his wife, and to his heires

males

males of their two bodies ingendred.

Also, if Tenements be giuen to a man, and his wife, and to the heires of the bodie of the man ingendred, in this case the husband hath estate in the generall taile, and the wife but estate for terme of life.

And if lands bee giuen to the husband and to the wife, and to the heires of the husband which hee ingendreth of the body of his wife: In this case the husband hath estate in the speciall tayle, and the wife but for terme of life.

And if the gift be made to the husband and to the wife, and to the heires of the wife of her body by the husband ingendred: then the wife hath estate in the speciall taile, and to the husband but for terme of life. But if Lands bee giuen to the husband and the wife, and to the heires that the husband ingendreth on the body of the wife: In this case both haue estate in the taile, for that this word (heires) is limitted no more to the one then to the other.

Also, if Lands be giuen to a man and to his heires that hee ingendreth on the body of his wife: In this case the husband hath estate in the taile speciall, and the wife nothing.

Also, if a man haue issue a sonne, and deceaseth, and the land is giuen to the sonne, and to the heires of the body of his father ingendred, this is a good taile, & yet the father was dead at the time of the gift.

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Also there be many other estates in the taile by the equitie of the said Estatute, that be not specified here. But if a man giue Lands or Tenements to another, to haue and to hold to him and to his heires males, or to his heires females, hee to whome such gift is made hath fee simple, for that it is not limited by the gift of what body the issue male or female shall be, and so it may not in any thing be taken by the equitie of the said estatute, and therefore hee hath fee simple.

Tenant in taile after possibility of issue extinct.

TEnant in the tayle after possibilitie of the issue extinct, is whereas Lands or Tenements be giuen vnto a man and to his wife in speciall taile, if one of them decease without issue, hee that suruiueth is Tenant in the taile after possibility of issue extinct. And if they haue issue, during the life of the issue, hee that suruiueth shall not be said Tenant in the tayle after possibility of issue extinct: yet if the issue decease without issue, so that there bee none aliue that may inherit by force of the taile, then he that suruiueth of the donees is tenant in the taile after possibilitie of issue extinct.

Also, if Lands be giuen to a man and to his heires that bee engendred on the body of his wife. In this case the wife hath nought in the Tenements, & the husband is seised as donee

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in ſpeciall tayle. And in this caſe if the wife deceaſe without iſſue of her body ingendred by her husband, then the husband is tenant in the tayle after poſſibility of iſſue extinct.

And note well, that none may be tenant in the tayle after poſſibility of iſſue extinct, but one of the donées, or the donee in ſpeciall taile, for the donée in general taile may never be ſaid tenant in the tayle after poſſibility of iſſue extinct, for that alway during his life, he may by poſſibility haue iſſue that may inherit by force of the ſame taile. And ſo in the ſame manner the iſſue that is heire vnto the donées in a ſpeciall tayle, may not be ſaid tenaunt in tayle after poſſibility, &c. cauſa qua ſupra.

And tenant in tayle after poſſibility of iſſue extinct ſhall never be puniſhed of waſte, for the inheritance that once was in him, Anno 10. Hen. 6. fol. 1. But he in the reuerſion may enter if he doth alien in fée, An. 45. Ed. 3. fol. 22.

Tenant by the Curteſie of England.

TEnaunt by the Curteſie of England, is where a man taketh a wife ſeiſed in fée ſimple, or in fée taile generall, or as heire in the taile ſpeciall, & hath iſſue by the ſame wife male or female borne alme, the iſſue after being dead or alme, if the wife deceaſe the husband ſhall hold the ſame during his life by the Law

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of England, and this is called tenaunt by the Curtelie, for that it is not vsed in any other Realme but onely in England. And some say that he shal not be said tenant by the Curtelie, but if the childe that hee hath by his wife bee heard cry, for by the cry is the proofe that the child that he had by his wife, was borne alive.

Tenant in Dower.

TEnant in Dower is, where a man is seised of certain lands or tenements in fee simple or in generall taile, or as heire in the taile speciall, and taketh a wife and deceaseth, the wife after the decease of her husband shalbe endowed of the third part of such lands or tenements that were her husbands any time during the coueriture, to haue and to hold to the same wife in seueralty, by meetes and bounds for terme of her life, whether shee haue by her husband issue or none, and of what age that the wife bee, so that she passe the age of nine yeares at the time of her husbands death, or else she shall not be endowed.

And note well, that by the common law the wife shall not haue for her dower but the third part of the tenements, which were her husbands during the Espousels. By custome of some Countrey she shall haue the halfe: and by custome of some towne, or borough, shee shall haue the whole: And in all these cases she shall be said tenant in Dower.

Alſo there is two other maner of Dowers, that is to ſay, Dower called dowment at the Church dore, and Dower called dowment by the fathers aſſent. Dowment at the church dore, is where a man of full age is ſeiſed in fee ſimple which ſhall be wedded vnto a wife, when he commeth to the Church dooze, and there after affiance and truth pleight made betweene them, endoweth his wife of his whole land, or of the halfe, or leſſe parcell, and there openly declareth the quantity, and the certaintie of his Land that ſhee ſhall haue for her Dower: In this caſe the wife after the death of her huſband ſhall enter into the ſaid quantitie of Land, of which her huſband endowed her without the aſſignement of any man. Dowmēt by the fathers aſſent is, where the father is ſeiſed of Lands or tenements in fee, and his ſonne and heire apparent (when hee is wedded) endoweth his wife at the Church dore of parcell of the Lands or tenemēts of his fathers, by the aſſent of his father, and aſſigneth the quantity of the parcels: In this caſe after the death of the ſonne, the wife ſhall enter into the ſame parcell without the aſſignement of any other. But it hath bin ſaid in this caſe, that it behooueth the wife to haue a deed of the Father, prooving his aſſent and conſent of ſuch endowment. And if after the death of her huſband ſhee enter and agree to any ſuch dower of the ſaid two dowers at the Church dooze, then ſhe is concluded to claime

any other Dower by the common law of any Lands or tenements, which were of the said husband. But if she will, shee may refuse such dower at the Church dooze, and then she may be endowed after the course of the Common Law. And note well, that no wife shall be endowed of the fathers allēt, in the forme afore-said, saue where the husband is son and heire apparant to his Father.

Inquire of these two cases of Endowement at the Church dooze &c. if the wife at the time of the death of her husband passe not the age of nine yeares, if she shall haue such dower or no.

And note well, that in all cases where the certainty appeareth, what Lands or Tenements the wife shall haue for her Dower, the wife may enter after the death of her husband, without assignement of any other: But where the certainty appeareth not, as to bee endowed of the third part, to haue in seuerall, or to bee endowed of the halfe after the custome to hold in seuerality: In such cases it behooueth that her Dower bee vnto her assigned after the death of her husband, because it is not limitted before the assignement, what parts of Lands or Tenements she shall haue for her Dower. But if there bee two Joyntenants of certaine Lands in fee, and the one alieneth that that to him pertayneth and belongeth, to another in fee, which taketh a wife and after dyeth: In this case the

the wife for her Dower shall haue the third part of the halfe that her husband purchased, to hold in common, and occupie in common, as her part amounteth, with the heire of her husband, and with the other Joyntenannt which alened not, for that in such case her Dower may not bee assigned by mætes and bounds.

And it is to bee vnderstoode, that the wife shall not be endowed of Lands or Tenements that her husband joyntly held with an other at the time of his death. But where he holdeth in common otherwise it is, as in the case aforesaid. And it is to wit, that if the Tenant in taile endow his wife at the Church dooze as is aforesaid, that shall serue for little or nought to his wife, for that, that after the death of her husband the issue in the taile may enter vpon the possession of the wife, and so may hee in reuersion if there be no issue in the taile aliue.

Also, if a man seised in fee simple beeing within age, endow his wife at the Church dooze, and dyeth, and the wife entreth: In this case the heire of the husband may put her out. But otherwise it is as it seemeth where the father is seised in fee, and the sonne within age endow his wife, of his fathers assent, the father then being of full age.

And there is another Dower which is called Dowment De la pluis beale: And that is in such case, that a man is seised of xl. acres

of land, and he holdeth xx. of the said xl. acres of one man by Knights seruice, and the other xx. Acres of another in socage, and taketh a wife, and hath issue a Sonne, and dyeth, his sonne being within the age of foureteen yeres, and the Lord, of whome the land is holden by Knights seruice, entreth into the xx. acres of Land holden of him, and them hath and occuppeth as Warden in Chiualrie during the childes nonage, and the childes mother entreth in the remnant, and it occupieth as gardein or warden in Socage: If in this case the wife bring a Writ of Dower against the Warden in Chiualry, to be endowed of the Tenements holden by knights seruice in the kings Court, or in any other Court, the Gardein in Chiualry may plead in such case all the matter, and shew how the wife is warden in Socage as is aforesaid, and pray that it may bee adiuged by the Court, that the wife endowe her selfe of the most faire, called Pluis beale, of the tenements that she hath as Warden in socage, after the value of the third part that shee claymeth to haue of the tenements in Chiualrie by her Writ of Dower, and if the wife may not gainesay it, then the iudgement shall be made, that the warden in chiualry shall hold the lands holden of him during the nonage of the Childe quite from the Woman, &c. And that the Woman may endow her selfe of the most faire part of the Lands that she hath as Warden in Socage to the value of the third part

part that the warden in chiualry hath, &c.

And after such iudgement giuen, the wife may take her neighbors, and in their presence endow her selfe by mætes and bounds of the fairest part of the tenements that she hath, as warden in Socage, to the value of the third part of the lands that the warden in Chiualry hath, and that to haue and hold for terme of her life. And such Dower is called Dower of the fairest part, or De pluis beale.

With this agreeth P. 45. Edw. 3. fol. 4. But there it was said, that after the time that the heire comes to his full age, the wife shall haue a new action of Dower against the heire, to be endowed of the third part of all that the man died seised. And note well, that such dowment may not be, but where the iudgement is giuen in the kings court, or in some other court. And the wife may do this for saluation of the estate of the warden in chiualrie during the nonage of the childe. And so yee may see fiue manner of dowers, that is to say, Dower by the common Law, Dower by custome, Dower at the Church doore, Dower of the Fathers assent, and Dower of the most faire. And remember that in euery case where a man taketh a wife seised of such estate of tenements, &c. so that the issue that he hath by his wife may by possibilitie inherite the same tenements of such estate that the wife hath, as heire to the wife: In such case after the wife is dead, hee shall haue the same tenements by the Curtesie of Eng-

land and otherwise not.

And also in euery case where ỹ wife taketh an husband seised of such estate of tenements &c. so that by possibility it may happen the wife to haue some issue by her husband, and that the same issue may by possibility inherite the same tenements of such estate that the husband had as heire to his father, of such tenements she shall haue her dower, and otherwise not. For if the tenementes be giuen vnto a man, and to his heires that he getteth on his wiues body, in such case the wife hath nought in the tenements, and the husband hath estate but as donee in special taile: Yet if the husband die without issue, the same wife shall be endowed of the same tenements, for that the issue that shee by possibility might haue had by the same husband, may inherite the same tenements. But if the wife decease, liuing the husband, which after taketh another wife, the second wife shal not be endowed in this case. Causa qua supra.

A man was seised of certaine Lands, and toke wife, and after aliened the same Lands with warranty, and after the feoffour and the feoffee died, & the wife of the feoffor bringeth an action of Dower against the issue of the feoffee, and he vouched the heire of the feoffor, and during the voucher and not termined, the wife of the feoffee bringeth an action of dower against the heire of the feoffee, and demandeth the third part of all that her husband was seised, and would not demaund the third part

of

of those two parts that her husband was seised, it was adiudged that shee should haue no iudgement vntill the time that the other plees were determined.

And also note that Vauisor saith, that if a man be seised of lands, and committeth felonie, and alieneth, & after is attainted, the wife shall haue good action of dower against the feoffee. But if it be escheated vnto ỹ king, or vnto the Lord, shee shall haue no writ of dower. And so see the diuersity, and inquire the cause.

Tenant for terme of life.

TEnant for terme of life is, where a man letteth Lands or Tenements to another for terme of life of the lessee, or for terme of life of another man: In such case the lessee is tenant for terme of life. But by common language, hee that holdeth for terme of his owne life, is called tenant for terme of life, and hee that holdeth for terme of another mans life, is called Tenaunt for terme of another mans life. And it is to be vnderstood, that there is feoffour and feoffee, donour and donee, lessour and and lessee. The feoffour is properly where a man infeoffeth another in any Lands or tenements in fee simple, he that maketh the feoffement is called the feoffor, and he to whome the feoffement is made, is called ỹ feoffee. And the donour is properly, where a man giueth certaine Lands or Tenements to another in

the taile, hee that maketh the gift is called donor, and he to whom the gift is made is called donee. And lessour is properly where a man letteth to another certaine lands or tenements for terme of life, for terme of yeares or to hold at will, hee that maketh the Lease is called lessour, and hee to whome the lease is made is called lessee, and euery one that hath estate in Lands or Tenements for terme of his owne life, or for terme of another mans life, is called Tenaunt of freehold. And none of lesse estate may haue freehold, but they of greater estate may haue freehold, for Tenaunt in fee simple hath freehold, and tenant in the taile hath also freehold.

free hold

Tenant for terme of yeares.

TEnant for terme of yeres is, where a man letteth Lands or tenements to another for terme of certaine yeares after the number of yeares that is accorded betweene the lessor and the lessee, and when the lessee entreth by force of the lease, thē is he tenāt for terme of yeares, and if the lessour in such case reserue to him a yearely rent vpon such lease, he may choose for to distraine for the rent in the tenements letten, or else hee may haue an Action of debt for the arrerages against the lessee. But in such case it behoueth that the lessour bee seised in the same tenements at the time of his lease, for

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it is a good plee for the lessee to say, that the lessor had nothing in the tenemẽts at the time of the leale, except the leale be made by deed indented, in which cale then such plea lieth not for the lessee to plead.

And it is to be vnderstood, that in a Leale for terme of yeares, by deed or without deed, it needeth no liuery of seisin to bee made to the lessee, but he may enter whensoeuer hee will by force of the same Leale. But of feoffements made in the Countrey or gifts in the taile, or Leases for terme of life, in such cases where freehold shall passe, if it be by deede or without deede, it behoueth to haue liuery of seisin, &c. But if a man let Lands or tenements by deed or without deede for terme of yeares, the remainder ouer to another for terme of life, or in the taile, or in fee, then in such case it behoueth that the lessor make liuery of seisin to the lessee for terme of yeares, or else there shall nothing passe to them in the remainder, though the lessee enter in the tenemẽts. And if the termor in such case enter before any such liuery of seisin made vnto him, then is the freehold and the reuersion in the lessor. But if he make any liuery of seisin vnto the lessee, then is the freehold with the fee to them in the remainder after the forme of the graunt, and will of the lessor.

And if a man will make a feoffement by deede or without deede, of Lands or Tenements that hee hath in many Townes in one Shire, if the liuery of seisin be made in one par-

parcell of the tenements in one Towne in the name of all, it sufficeth for all the other lands or tenements comprehended in the same feoffement, in all other townes in the same Shire. But if a mā make a deed of feoffemēt of lands or tenements in diuers shires, there it behoueth him to haue in euery shire a liuery of seisin. And in some case a man shall haue by the graunt of another fee simple, fee taile, or freehold, without liuery of seisin. As if two men be, and each of them is seised of a quantitie of land within one shire, & the one graunteth his land to the other in exchāge for that land that the other hath, & in the same manner the other graunteth his land vnto the first grantor, in exchange for the land that the first grantor hath: In this case each may enter in the others lāds so taken in exchāge, without any liuery of seisin. And such exchange made by words, of tenements within the same Shire without any writing, is good enough. And if the Lands or tenements be in diuers shires, that is to say, that ꝑ one haue in one shire, & ꝑ the other haue in another shire, it behoueth to haue a deed indented made betweene them of such exchange.

And note, that in exchāges it behoueth that the estates that both parties haue in the lands so exchanged, be equall: For if the one willeth & grāteth that the other shall haue his land in the taile, for the land that he hath of the grant of the other in fee simple, though the other agree to that, yet this exchange is but voyd, for

that

that the estates be not euen.

In the same manner it is where it is granted and agreed between them, that the one shal haue in the one Land fee taile, & the other shall haue in the other Land but terme of life. Or if one shall haue in the one Land fee taile generall, and the other in the other Land fee taile especiall &c. So alway it behoueth that in exchange the estate of both parties be euen, that is to say, if the one haue fee simple in the one Land, that the other shall haue such estate in the other land, and if the one haue fee taile in the one land, then the other shall haue likewise in the other Land. Et sic de alijs statibus. But it is nothing to charge of the euen value of the lands, for though that the land of the one is so much more in value then the land of the other, this is nothing to the purpose, so that the estates made by the exchange bee euen, & in exchange be two grants, for euery party granteth his Land to the other in exchange, and in each of their graunts mention shall be made of the exchange.

And if a man let land to another for terme of yeres, though the lessor die before the lessee enter into the tenements, yet may he enter into the tenements after the death of the lessor, for that, that the lessee by force of the lease hath right incontinent to haue the tenements after the fourme of the Lease. But if a man make a deed of feoffement vnto another, and a letter of attorney to a man to deliuer to him seisin

ſeiſin by force of the ſame deed, yet if the liuery of ſeiſin bee not made in the life of him that made the deede, it auaileth not, for that the other hath no manner of right to haue the tenements after the purport of the deede before the liuerie of ſeiſin &c. And if no liuery bee made, then after the death of him that made the deed, the right of ſuch tenemẽts is incontinently in his heire, or in ſome other. Alſo if tenements be let to a man for terme of halfe a yeare, or for terme of a quarter of a yere &c. In ſuch caſe, if the leſſee make waſt, the leſſour ſhall haue againſt him a writ of Waſt, and the writ ſhall ſay, Quod tenet ad terminum annorum. But hee ſhall haue a ſpeciall declaration vpon the troth of this matter, and the plea ſhall not abate the writ, for that that hee may haue no other writ vpon the matter. An. 7. H. 7. fol. 1.

Tenant at will.

TEnaunt at will is, where Lands or Tenements bee letten by a man vnto an other, To haue and to hold to him at the will of the leſſour, by force of which leaſe the leſſee is in poſſeſſion: In ſuch caſe the leſſee is called tenant at will, for that he hath no certaine nor ſure eſtate, for the leſſor may put him out at what time it pleaſeth him: yet if the leſſee ſow the land, & the leſſor (after the ſowing and before that his graynes be ripe) put him out, yet ſhall the leſſee haue his graynes, and ſhal haue free egreſſe and regreſſe to reape and to carry his

his graynes, for that he will not at what time his lessour would enter vpon him. Otherwise it is if tenant for terme of yeres before the end of his terme soweth the Land, and the terme end before that his graynes be ripe: In this case the lessor, or he in the reuersion shall haue the graynes, for that the termor knew well the certainty of his terme, and when his term should be ended.

Also, if a house bee let to a man to hold at will, by force of which the lessee entreth into the house, within which house he bringeth his houshold stuffe, and after the lessour putteth him out, yet shall hee haue free entrie, egresse, and regresse in the same house by reasonable time to carrie his goods and houshold stuffe. And if a man be seised of a house in fee simple, fee taile, or for terme of life, the which hath certaine goods within the same house, and maketh his executors and deceaseth, whosoeuer after his death hath the house yet shal his executors haue free entrie, egresse, and regresse to carrie out of the house the goods of their testator by a reasonable time.

Also, if a man make a deede of feoffement vnto another of certaine Land, and deliuereth to him the deed, but no liuery of seisin: In this case he to whome the deede is made may enter into the Land, and hold and occupie it at the will of him that made the deed, for that that it is prooued by the words of the deed, that it is his will that the other shall haue the land. But

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he that made the deede, may put him out when he will.

Also if an house bee let to hold at will, the lessee is not holden to sustaine or repaire the house, as tenant for terme of yeares is holden to doe. But if the lessee at will make voluntarie waste, as in pulling downe of houses, or in cutting or felling of trees: It is said that the lessour shal haue for that against him an action of Trespas. As if I deliuer to a man my sheep to dunge or marle his Land, or mine oxen to eyze his land, and he slayeth the beasts, I may well haue an action of Trespas against him, notwithstanding the deliuerie.

Also if the lessour vpon such lease at will reserue vnto him a yearely rent, he may distraine for the rent behind, or haue for that an action of Debt at his owne choise, Hill. 6. Rich. 2. in a Replevin.

Tenant by Copie of Court Rolle.

TEnant by Copie of Court Rolle is, as if a man bee seised of a Manour, within which Manour there is a custome, & hath been vsed in time out of minde, that certaine Tenaunts within the same Manour haue vsed to haue Lands or Tenements, to hold to them and to their heires in fee simple, or in fee tayle, or for terme of life &c. at the will of the Lord, after the custome of the same Manor: and such a tenant may not alien the land by deede, for then

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the lord may enter as in a thing forfeit to him: But if he will alien his Land to another, him it behoueth after some custome to surrender the tenements in some Court &c. into the Lords hands, to the vse of him that shall haue the estate, in such forme, or to such effect.

Ad hanc Curiam venit A. de B. & sursum reddidit in eadem Curia, vnum mesuagium &c. in manus domini, ad vsum E. de A. & hæredum suorum, vel hæredum de corpore suo exeunt' vel pro termino vitæ suę &c. Et super hoc venit predictus E. de A. & cepit de domino in eadem Curia mesuagium predictum &c. Habendum & tenendum sibi & hęredibus suis, vel sibi & hæredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ suæ, ad voluntatem domini, secundum consuetudinem manerij, faciend' & reddend' inde redditus debit', seruitia, & consuetudines inde prius debita, & de iure consueta, Et dat domino de fine &c. Et fecit domino fidelitatem &c. That is to say, A. of B. commeth vnto this Court, and surrendreth in the same court a mease &c. into the hands of the Lord, to the vse of E. of A. and his heires, or the heires issuing of his body, or for terme of life, &c. And vpon that, commeth the foresaid E. of A. and taketh of the Lord in the same court, the foresaid mease, &c. To haue and to hold to him and to his heires, or to him and to his heires issuing of his body, or to him for terme of life, at the Lords will, after the custome of the manor to do and yeeld there-

therefore rents, debts, seruices, and customes thereof before due and accustomed &c. and giueth the Lord for a fine, &c. and maketh vnto the Lord his fealty, &c. And such tenants bee called Tenants by Copie of Court Rolle, for that they haue no other euidences concerning their tenements, but the Copies of the Court Rolles: And such Tenants shall not implead nor be impleaded for their Tenements by the Kings Writ. But if they will implead other for their Tenements they shall haue a plaint made in the Court of the Lord in such forme, or to such effect. A. de B. queritur versus C. de D. in placito terræ, videlicet, de vno mesuagio, quadraginta acris terr', quatuor acris prati &c. cum pertinentijs. Et facit protestationem sequi querelam istam in natura breuis Domini Regis Assisæ mortis antecessoris ad communem Legem, vel breuis Domini Regis Assisę nouæ disseis. ad communem Legem. That is to say, A. of B. complaineth against C. of D. of a plee of Land: That is to say, of a mease, and fortie acres of Land, foure acres of meadow &c. with the appurtenances. And maketh protestation to sue his plaint in nature of the kings Writ of Assise of the death of his auncestor at the common Law, or by a Writ of our Soueraigne Lord the King, of Assise of nouel disseisin at the common Lawe, or in nature of some other writ &c. pledges to prosecute, F. G. &c. And though that some such tenaunts haue inheritãce after the custome of the manour, yet they

they haue none estate but at the Lords will, & after the course of the common Law, for it is said, if the Lord put them out, they haue no other remedy but to sue vnto the Lord by petition: For if they had any other remedy they should not be said tenants at the Lords will after the custome of the Mannor, but the Lord will not breake the custome that is reasonable in such cases. But Brian chiefe Justice saith, that his opinion hath alwaies beene, and alwaies shal be, if such a tenant by custome (paying his seruices) be cast out by the Lord, hee shal haue an action of trespasse against him, H. 2. E. 4. fol. 80. And likewise was the opinion of Danby chiefe Iustice M. 7. E. 4. fol 19. for he saith that the tenant by the Custome, is aswell inheritable to haue the land after the custome, as well as he that hath franktenement by the common Law.

Customary tenants inheritable

TEnants by the Parde, be in such nature as tenants by Copie of Court Roll. But the cause for which they bee called tenants by the Rodde, or Parde, is, for that when they will surrender their Tenements into the Lords hand, to the vse of another, they shall haue a little pard or rodde by the custome and vse, in their hands, which they shall deliuer vnto the Steward or Baylife, after the Custome and vse of the Mannor, and he that shall haue the land, shall take the same land in the Court and his taking shall bee entred in the Rolle. And the Steward, or the bailife, according to

the custome, shall deliuer vnto him, that taketh the Land, the same yarde or another yarde in the name of seisin. And for this cause they be called Tenants by the yarde. But they haue none other Euidence but Copie of the Court Rolle.

And also in diuers Lordships and Mannors there is such a custome, if such a tenaunt that holdeth by the Custome will alien his Lands or Tenements, he may surrender his lands vnto the Bailife, or to the Reéue, or to 2. honest men of the same Lordship, to the vse of him that shall haue the Land, to haue in fée simple, fée taile, or for terme of life, &c. and all that shall be presented at the nert Court. And then hee that shall haue the Land by Copie of Court Roll, shall haue the same land after the intent of the surrender. And it is to wit, that in diuers Lordships, & diuers manors, there be made diuers Customes in such cases, as to take Tenements, & as to plead, & as touching other things and customes to be done, and all that, that is not against reason, may well bee admitted and allowed. And such tenants that hold after the Custome of a seigniory, or after the custome of a Mannor, though they haue estate of inheritaunce after the custome of the lordship, or of the manor, yet because they haue not any freehold by the course of the Common Law, they be called tenants of base tenure.

And diuers diuersities there bee betweene a tenant at will, which is in by the lease of his lessor

lessor by the course of the Common Law, and tenant after the custome of the Mannor in the fourme aforesaide. For tenant at will after the custome may haue estate of inheritance, as it is aforesaid at the lords will after the custome and vsage of the Manor: But if a man haue lands or tenements which bee not within such Manor or Lordship where such custome hath beene vsed in the fourme aforesaid, and will let such Lands or tenements to another, to haue and to hold to him and to his heires at the will of his Lessor, these words, to the heires of the Lessee be void, for this is the cause, if the lessee die, and his heire enter, the lessor shall haue a good action of Trespas against him, but not so against the heire of the tenant by the custome in any case &c. for that the custome of the Manor in some case may helpe him to barre his Lord in an action of Trespasse.

Also, Tenant by the custome in some places ought to repaire and sustaine the houses, and the other tenaunt at will ought not. Also one by the custome shall doe Fealty, and the other not. And diuers other diuersites there bee betweene them.

Thus endeth the first Booke.

HOmage is the most honourable seruice and most humble seruice of reuerence that a Frankitenaunt may doe to his Lord: For when the Tenaunt shall make Homage to his Lord, hee shall bee vngirt, and his head vncouered, and his Lord shall sit, and the Tenaunt shall kneele before him on both his knees, and hold his hands ioyntly together betweene the hands of his Lord, and shall say thus: I become your man from this day forward of life and limme, and of earthly worship, and vnto you shall bee true and faithfull, and beare you faith for the tenements that I claime to hold of you, (saving the faith that I owe vnto our Soueraigne Lord the King.) And then the Lord so sitting shall kisse him.

But if an Abbot, or Prior, or any other man of religion shall make Homage vnto his Lord, hee shall not say, I become your man, for that he hath professed himselfe onely to bee Gods man: But he shall say thus, I doe you homage, and vnto you shall be true and faithfull, and beare you faith for the Tenements that I claime to hold of you: Saving the faith that I owe vnto our Soueraigne Lord the King.

Also, if a woman sole shall make Homage vnto the Lord, shee shall not say, I become your woman, for that is not conuenient for a woman to say, that shee shall become a woman to any but onely to her Husband

band when she is wedded, But she shall say, I make vnto you Homage, and to you shall be true and faithfull, and shall beare you faith for the tenements that I hold of you, saving the faith that I owe to our Soucraign Lord the King.

But if a man haue seueral tenancies which he holdeth of seuerall Lords, that is to say, euery tenancie by Homage: Then when hee maketh homage vnto one of his Lords, hee shall say in the end of his Homage, Saving the faith that I owe vnto the King, and vnto my other Lords.

And note well, that none shal make Homage, but such as haue estate in fee simple, or in fee taile in his owne right, or in any other mans right: For it is a ground in the Law, that he that hath estate but for terme o life, shal make none homage, nor take none homage.

For if a woman haue lands or tenements in fee simple, or in fee taile, which shee holdeth of her Lord by homage, and taketh an husband, and hath issue, then the husband in the life of the wife shall make homage, for that hee hath title to haue the land by the curtesie, if he suruiue his wife: And also he holdeth in the right of his wife. But afore issue betweene them, the Homage shall be made in both their names: But if the wife decease before homage made by the husband in the wiues life, and the husband holdeth himselfe in as tenaunt by the curtesie, hee shall make no Homage vnto

his Lord, for that he hath then none estate but for terme of life. More shall be said of Homage in the tenure of Homage auncestrell.

Fealty.

FEalty is as much as to say, as Fidelitas in Latine: and when a franktenant shall make fealty vnto the Lord, hee shall hold his right hand vpon a booke, and shall say thus:

Heare you this my Lord, that I vnto you shall bee faithfull and true, and beare you faith for the Lands & Tenements, that I claime to hold of you, and truely to you shall doe the customes and services that I ought to doe vnto you at terme assigned, as God me helpe & all his Saints, & then he kisseth the booke: But he shall not kneele when he maketh his fealty, nor shall make such humble reuerence, as is aforesaid in Homage. And great diuersitie there is had betweene making of Fealty, and of Homage: For Homage may not bee made but to the Lord himselfe. But the Steward of the Lords Court, or the Bayliffe may take Fealty for the Lord.

Also tenant for terme of life shall make Fealty, and yet he shall make none homage. And diuers other diuersities there be betweene homage and Fealty.

Also a man may see a good note, Anno 15. Edw. 3. where and how a man and his wife made homage and fealty in the common bank, which is written in such fourme, Note that

John

John Lewknor & Elizabeth his wife, made homage vnto William Thorpe in this manner: The one and the other held ioyntly their hands betwéen the hãds of William Thorpe, and the husband said in this wise: wee vnto you make Homage, and beare you faith for the lands that we hold of A. your conusor, which hath graunted your seruices in B. and in C. and the other townes &c. against all men (sauing the faith that wee owe vnto our Soueraigne Lord the King, and to his heires, & to our other Lords) and the one and the other killed him. And after they made fealty, and the one & the other held their hands together vpon a Booke, & the husband said the words, and both killed the Booke. More shal be said of Fealty in the tenure of Socage, and in the tenure of Frankalmoigne, and in the tenure of Homage auncestrell.

Eſcuage.

EScuage is called in Latin Scutagium, that is to say, seruice of shield. And such a tenant that holdeth his land by Eſcuage, holdeth by knights seruice. And also it is commonly said, that some hold by a fée of knights seruice, and some by ½ halfe fée of knights seruice, &c. And it is said, that when the king maketh a voiage royall into Scotland for to subdue the Scots, hee that holdeth by a fée of knights seruice, behoueth to be with the King by fortie daies, well & conuenably arrayed for the warre. And

likewise hee that holdeth his land by the halfe of a fee by Knights seruice, ought to bee with the king by xx. daies. And he that holdeth his Land by the fourth part of a fee by Knights seruice, him it behoueth to be with the King by ten daies, and so after the quantitie, hee that hath more, to doe more, and he that hath lesse, to doe lesse.

But it appeareth by the plees & arguments made in a good plee vpon a writ of Detinue of an Obligation, brought by one Henry Gray, An. 7. E. 3. fol. 29. that it nedeth not to him that holdeth by Escuage to goe himselfe, if he will find an able person for the war conuenably arrayed for the war, to goe with the King, and that semeth good reason: for it may be, that he that holdeth by such seruice is sick, in such wise that he may not go nor ride.

And also an Abbot, or any other man of religion, or a Woman sole that holdeth by such seruice, ought not in such case to goe in proper person. And Sir William Herle that time chiefe Justice of the common Place said in the said Plee, that Escuage shall not be graunted, but where the King himselfe goeth in proper person. And so it abode in iudgement of the same plee, if these xl. daies shall be accompted from the day of the Muster of the Kings host made by the Commons and the Kings commandement: Or els from the day that the King first entreth into Scotland, &c. therefore inquire of this matter.

And

And after such voyage into Scotland it is commonly said, that by the authoritie of Parliament, the Escuage shalbe set and put in certaine: that is to say, a certaine summe of money how much every one ỹ holdeth by a whole fee of Knights service, which was not in his owne proper person, nor none other for him with the King, shall pay vnto the Lord, of whom he holdeth his land by escuage. As put case that it was ordained by authority of parliamẽt, that every one that holdeth by a whole fee by Knights service, which was not with the King shall pay to his Lord xl.s. That he that holdeth by the halfe of a fee by Knights service, shall pay vnto his Lord but xx.s. and so who more, more, and who lesse, lesse. And some tenants hold, that if Escuage runne by authority of parliament to any summe of money, that they shall pay but the halfe of that summe, and some but the fourth part of that summe. But because the Escuage that they shall pay is not certaine, for that it is at no certaine what the Parliament will assesse the Escuage, they hold by knights service. But otherwise it is of Escuage certaine, of which shall be spoken of in the tenure of Socage.

And if a man speake generally of Escuage, it shall be vnderstood by the common speech of Escuage not certaine, which is Knights service: And such Escuage draweth vnto him Homage, and Homage draweth vnto him Fealty, for fealty is incident to every manner of

seruice

seruice, but to the tenure of frankalmoigne, as it shalbe said hereafter in the tenure of franke-almoigne: So as he that holdeth by Escuage holdeth by homage, Fealty, and Escuage.

And it is to bee vnderstood, that when Escuage is sessed by authority of Parliament, euery Lord of whom the land is holden by escuage, shall haue the Escuage so sessed by the Parliament, because it is vnderstoode by the Law, that at the beginning such Tenements were giuen by the Lords to hold by such seruices to defend their Lords as well as the King, and to set in quiet and rest their Lords against the King of Scots aforesaid. And for that such tenements came first of the Lords, it is reason that they haue the escuage of their tenants.

And the Lords in such case may distraine for the Escauge so assessed, or they may haue the Kings writs, directed vnto the Shiriffes of the Shire, to leuie such Escuage for them, as it appeareth by the Register fol. 88.

But of such tenants that hold of the King by Escuage, which were not with the king in Scotland, the King himselfe shall haue the escuage.

Item, in such case aforesaid, where the King maketh a voyage royall into Scotland, and the Escuage is assessed by Parliament, if the Lord distraine his tenants that holdeth of him by seruice of a whole knights fee, for the escuage so assessed &c. and the tenant pleadeth

and

and will aueerre that he was with the king in Scotland, &c. by xl. dayes, and the Lord will auerre the contrary, it is ſaid that it ſhall bee tried by the certification of the Marſhall of the Kings hoſt in writing vnder his ſeale, which ſhall be ſent to the Juſtices.

Homage, Eſcuage, and Fealty.

TEnure by Homage, Eſcuage, and Fealty, is to hold by knights ſeruice, and it draweth vnto it ward, Mariage, and reliefe: For when ſuch a tenant dieth, his heire male being within the age of xxj. yeares, the Lord ſhall haue the land holden of him vnto the age of the heire of one and twenty yeres, which is called full age, for that ſuch an heire by the vnderſtanding of the Law, is not able to do knights ſeruice before the age of xxj. yeres.

And alſo if ſuch an heire bee not married at the time of the death of his Auncеſter, then the Lord ſhall haue the Ward and marriage of him. But if ſuch a Tenaunt die his heire female being of the age of foureteene yeares or more, then the Lord ſhal not haue the ward neither of the Land, nor of the body, for that a Woman of ſuch age may haue a Huſband able to doe Knights ſeruice. But if ſuch an heire female bee within the age of foureteene yeres and not married at the time of the death of her Auncеſter, then the Lord ſhall haue the

ward

ward of the Lands holden of him, till the age of ſuch an heire female of 16 yeares: For that it is giuen by the ſtatute of Weſtmin. 1. cap. 11. that by two yeares next following the ſaid 14. yeares, the Lord may tender a conuenient mariage without diſparaging of ſuch an heire female. And if the Lord do not tender her ſuch mariage within the ſaid two yeares, then ſhee at the end of the ſaid two yeares may enter and put out the Lord. But if ſuch an heire female bee maried within the age of 14. yeares in the life of the auncеſter, and the auncеſter die, ſhe being within the age of 14. yeares, the Lord ſhall haue but the ward of the land, till an end of 14. yeares of age of ſuch an heire female: And then her huſband and ſhee may enter into the land & put out the Lord, for this is out of the caſe of the Statute: Inſomuch that the Lord cannot tender mariage to her that is married &c. For before the ſaid ſtatute of Weſtm'1. ſuch iſſue female that was within age of 14. yeres at the time of the death of her auncеſter, and after that ſhee had accompliſhed the age of foureteene yeares without any tender of mariage to her by her Lord, ſuch an heire female then might enter into the Land, and put out the Lord, as appeareth by the reherſall, and by the wordes of the ſame Eſtatute: So that the ſaid Statute was made in ſuch caſe all for the aduauntage of the Lord, as it ſeemeth. But yet that at all times it is vnderſtood by the wordes of the

ſame

ſame eſtatute, that the Lord ſhall not haue the two yeres after the xiiij. yeres, as is afore ſaid,

And note well, that the full age of the male and female after the commõ ſpæch is ſaid the age of xxj. And the age of diſcretion is ſaid the age of xiiij. yeares, for a child at ſuch age, which is wedded within ſuch age to a womã, may agree to the mariage or diſagree.

And if the Warden in chiualry marrie once his ward within the age of xiiij yeares, and after the age of xiiij. yeares hee diſagreeth to the marriage. It is ſaid by ſome folke that the Childe is not holden by the Lawe to bee married another time by his Warden, for that the warden had once the marriage of him, and therefore he was out of his ward, as concerning the ward of his body. And when hee had once the marriage of him, and therefore was out of his Ward, hee ſhall no more haue the marriage of him. In the ſame manner it is, if the Warden marrie him, and the wife dye, the Childe being within age of xiiij. yeres, or xxj. yeares. And that the Childe may diſagree to ſuch marriage when hee commeth to thage of xiiij. yeres, it is prooued by the words of the Statute of Merton cap. 6. that ſaith thus: De dominis qui maritauerint illos quos habent in cuſtodia ſua, villanis, & alijs, ſicut burgenſibus vbi diſparagentur, ſi tales homines fuerint infra xiiij. annos, & talis ætatis quod matrimonio conſentire non poſſint, tunc ſi parentes

rentes illius conquerant', dominus ille amittat cuſtodiam illam vſque ad ętatem hæredis. Et omne commodũ quod inde recept' fuerit conuertatur in commodum hęredis in fram ætatem exiſtentis, ſecundum diſpoſitionem parentum, propter dedecus ei impoſitum. Si autem fuerit 14. annorum & vltra quod conſentire poterit, & tali maritagio conſenſerit, nulla ſequatur pœna. And ſo it is prooued by the ſame ſtatute that no diſparagement ſhall be, but where that he that hath the ward marieth him within the age of xiiij. yeares.

Alſo, it hath bin a queſtion how theſe words ſhould be vnderſtood: Si parentes conquerantur, &c. And it ſeemeth vnto ſome that, conſidering the ſtatute of Magna charta cap. 6. that willeth, that hæredes maritentur abſque diſparagatione &c. vpon which the ſaid Statute of Merton vpon this point is grounded, as it ſeemeth, and inſomuch as it was neuer ſeene that any action was brought vpon the ſtatute of Merton for ſuch diſparaging againſt the Warden, and if an action may bee taken vpon ſuch matter, it ſhall bee taken by common preſumption before this time, or at ſome time to bee put in vre, that theſe wordes ſhall bee vnderſtood in ſuch manner, Si parentes conquerantur, i. Si parentes inter ſe lamentantur, which is as much as to ſay, that if the Coſins of ſuch a Childe haue cauſe to make lamentation and complaint amongſt them for the ſhame done to their coſin ſo diſparaged,

which

which is in a manner a shame to them all, then may the next cousin to whom the heritage may not descend enter, and put out the Warden in Chiualry. And if he will not, another cosin of the childes may do it, and he to take the issues and profits vnto the vse of the childe, and of that yeeld the child account when he commeth vnto his full age: Or else the childe within age may enter himselfe, & put out the Warden, &c. Sed Quære de hoc.

Also there are many other kinds of disparagings, which bee not specified in the same Statute: As if the heire that is in ward be married vnto one that hath but one foote, or one hand, or else deformed, or lame, or hauing an horrible disease, or else a great & continuall infirmitie: Or if the heire male be married to a woman past child bearing. And many other causes of disparaging there be, but inquire for them, for it is a good matter to learne. And of heires males that bee within age of one and twenty yeares after the death of their ancesters vnmarried: In such case the Lord shall haue the marriage of such an heire, and haue space and time to tender to him conuenable mariage without disparaging within the same time of xxj. yeres.

And it is to wit, that the heire in such case may chuse if hee will bee married or no. But if the Lord which is called Warden in Chiualry, tender a conuenable marriage to such an heire within the age of one and twen-

tie

tie ſ one peres, without diſparaging, and the heire refuſe, and marry not himſelfe within the ſame age: Then the ſaid Warden ſhall haue the value of the marriage of ſuch an heire. But if ſuch an heire male marrie himſelfe within the age of xxj. peares, againſt the will of the Warden in chiualry, then ſhall the Warden haue double the value of the mariage, by force of the ſtatute of Merton aforeſaid, as in the ſame ſtatute is more fully compziſed.

And diuers tenants hold of their Lords by Knights ſeruice, ſ yet they hold not by Eſcuage, nor pay no Eſcuage, as they that hold their land by Caſtleward, that is to ſay, to keep a Tower of a Caſtle, or a gaole, or ſome other place by reaſonable warning, whē their Lords heare tell that enemies will come, or bee come into England. And in many other caſes a man may hold by Knights ſeruice, and yet hee holdeth not by Eſcuage, nor payeth no Eſcuage, as ſhall be ſaid in the tenure of Graund Serieanty. But in all caſes where a man holdeth by knights ſeruice, ſuch ſeruices drawe to the Lord, ward, and marriage.

And if tenant that holdeth of his Lord by ſeruice of an whole Knights fee die, his heire being of full age of one and twenty peres, his heire ſhal pay vnto the Lord. C ſ for a relief. And hee that holdeth by the halfe fee ſhall pay L. ſ.

Alſo if a man hold his Land of the Lord by the ſeruice of two Knights fees, then the

heire

heire at full age at the time of the death of his auncester, shall pay to his Lord ten pound for reliefe.

Also, if there be graundfather, mother, and sonne, and the mother dyeth liuing the father of the sonne, and after the grandfather which held his land by Knights seruice dyeth seised, and the land discendeth to the sonne of the mother, as heire to the Graundfather, which is within age: In such case the Lord shall haue the Ward of the land but not the Ward of the heire. For that none shalbe in ward of his body liuing his father, because the father during his life shal haue the marriage of his heire apparant, and not the Lord. Otherwise it is if the father bee dead liuing the mother, where the land holden in Chiualry discendeth to the sonne on the fathers side &c.

Also if a man be seised of land which is holden by Knights seruice, and maketh a feoffement in fée to his vse, and dyeth seised of the vse, his heire within age, and no will by him declared, the Lord shall haue a writ of Right, of the body of the land, like as if the tenaunt had dyed seised of the demeine. And if the heire bee of full age at the death of his auncester, in such a case he shall pay relefe, like as if he had ben seised of a demeine, and that is by the statute of An.4.H.7.cap.17.

Also there is a warden in right in chiualrie, and a warden in deed in Chiualry: warden in right in chiualry, is where the Lord because

of his Lordshippe is seised of the ward of the Land, and the heire vt supra. Warden indeed in Chivalry, is where the Lord in such case after his seising graunteth by deed, or without deed, the ward of the land, or of the heire, or of both to another man, by force of which graunt the graunteé is in possession, then is the graunteé called warden indeed &c.

Tenure in Socage.

TEnure in Socage, is where the Tenaunt holdeth of his Lord the tenancy by certaine service for all maner of services, so that the service be not knights service: As where a man holdeth his Land of his Lord by fealty and certaine rent for all maner of services: Or else where a man holdeth his land by homage, fealty, & certain rent, for all maner of services, for homage by it selfe maketh not knights service.

Also a man may hold of his Lord onely by fealty, and such tenure is Tenure in Socage, for every tenure that is not tenure in Chivalrie, is tenure in Socage. And it is said, that the cause wherefore such tenure is said, & hath the name of tenure in Socage, is this: Quia hoc Socag. idem est, quod seruic' Socæ, Et hæc Soca Socæ, idem est quod Caruca, s. one Soke, or one plough Land.

And in olde time before the limitation of

of time out of mind, great part of the tenants that held of their Lords by Socage, ought to come with their Ploughes, euery of the said tenants by certaine daies in the yeare, to eyze and sow the Lords Lands of his owne graines: But for that such works were done for the liuelode and sustenance of their Lords, they were acquited against their Lord of all manner of seruices. And for this, that such seruice was doue with their Ploughes, such tenure was called tenure in Socage. And after that such seruices were chaunged into diuers other manner seruices, by consent of the tenants, and by the desire of their Lords, that is to say, into a yearely rent &c. But yet the name of Socage abydeth, and in diuers places Tenaunts yet doe such seruice with their Ploughes vnto their Lord, so that all manner of seruices that bee not Tenures in knights seruice, bee called Tenures in Socage.

Also if a man hold of his Lord by Escuage certaine, That is to say, in such forme, that when Escuage runneth and is assessed by the Parliament to a more summe, or to a lesse summe, that the Tenant shall pay to the Lord but halfe a Marke for escuage, and neither more ne lesse, to how great summe, or little summe that the Escuage runneth, in this case because the escuage is certaine before that any escuage is assessed &c. such tenure is tenure in Socage, and not knights seruice. But where the

ſumme that the tenaunt ſhall pay for Eſcuage, is not certaine, that is to ſay, where it may be that the ſumme that the Tenant ſhall pay for eſcuage may be at one time more, and another leſſe, after that it is aſſeſſed, &c. then ſuch tenure is tenure by knights ſeruice.

Alſo if a man hold his Land for to pay certaine rent to his Lord for Caſtlegard, ſuch tenure is tenure in Socage. But where the tenant himſelfe ought by him, or by any other to make caſtleward, ſuch is tenure by knights ſeruice.

Alſo in all caſes where the tenant holdeth of his Lord to pay to him any certaine rent, that rent is called rent ſeruice.

Alſo in ſuch tenures in ſocage, if the tenant haue iſſue and die, his iſſue being within the age of 14. yeares, then the next friend of that heire to whome the heritage may not deſcend ſhall haue the ward of the land, and of the heire vnto the age of the heire of 14. yeeres, and ſuch warden is called warden in Socage. For if Land deſcend to the heire by the fathers ſide, then the mother, or ſome other nigh coſin of the mothers ſide ſhall haue the ward. And if land deſcend to the heire by the mothers ſide, then the father or the next friend of the fathers ſide ſhall haue the ward of ſuch Lands or tenements. And when the heire commeth to the age of 14. yeares compleat, he may enter & put out his warden in Socage, and occupie the land himſelfe if he will. And ſuch Warden in

Socage shall take no issues or profits of such lands or tenements to his owne vse, but only to the vse and profite of the heire, and of that shall yeeld accompt when it pleaseth the heire, after that the heire hath accomplished the age of foureteene yeres. But such a warden vpon such accompt shall haue allowance, of all his reasonable costes and expences of all things. And if such a warden marry the heire within age of foureteene yeres, he shall make accompt to the heire, or to his executors of the value of the marriage, though he tooke nothing for the value of the marriage, for that it shall be counted his owne folly, that hee would marry him without taking the value of the marriage, without hee marry him to such a marriage that is worth in value as much as the marriage of the heire &c. Also, if any other man that is not a nigh friend &c. occupy the lands and tenements of the heire as warden in Socage, hee shall bee compelled to yeeld accompt vnto the heire, as well as his next friend: for it is no plea for him in a writ of accompt to say that hee is not his nigh friend &c. But hee shall answere whether hee occupieth the Landes or Tenements as Warden in Socage or not. But inquire if after that the heire haue accomplished the age of fourteene yeres, and the Warden in Socage continually occupyeth the Land, till the heire commeth to full age of xxj. yeares, If the heire at his full age shall haue an Action of Accompt against the

Wardein for the time that he hath occupied after the said foureteene yeares, as against his wardein in socage, or against him as against his Baylife.

Also if Wardein in chiualry make his executors, and dye, the heire being within age &c. The executors shal haue the ward, during the nonage. But if the warden in Socage make executors and dye, the heire being within the age of foureteene yeares, his executors shall not haue the Ward, but another nigh friend to whome the heritage may not descend, shall haue the Ward. And the cause of diuersitie is, for that the wardein in Chiualry hath the Ward to his proper vse, and the Wardein in Socage hath not the Warde to his owne vse, but to the vse of the heire. And in such case, where the warden in socage dyeth before any such accompt made by him, the heire is of that without remedy, for that no Writ of accompt lyeth against the executors, but onely for the King.

Also the Lord of whome the Land is holden in Socage after the death of his tenaunt, shall haue relife in such forme. If the tenaunt holde by Fealty, and certaine rent to pay yearely &c. If the termes of payment bee to pay by two termes of the yeare, or by foure Termes of the yeare, the Lord shall haue of the heire of his Tenaunt, as much as the rent amounteth that hee should pay by yeare. As if the Tenaunt held of the

Lord

Lord by fealty, and x. shillings of rent, payable at certaine termes of the yeare, then the heire shal pay to the Lord x. S. for relieſe aboue tenne shillings that hee shall pay for the rent. Looke more in the Statute of Anno 19. H.7. cap. 15.

And in such case after the death of the Tenant, such relieſe is due to the Lord incontinent, of what age soeuer the heire be, for that such a Lord may not haue the ward of the bodie, nor the land of the heire. And the Lord in such case ought not to abide the paiment of his relieſe, after the termes and dayes of payment of the rent, but he ought to haue his relieſe incontinent; And therefore hee may incontinent distraine after the death of his tenaunt for the relieſe.

In the same maner it is, where a tenāt holdeth of his Lord by fealty, and by a pound of Comin, or a pound of Pepper, by the yere, and the Tenant die, the Lord shall haue for his relieſe a pound of Comin, or a pound of Pepper.

In the same manner it is, where the tenant holdeth to pay by the yere a certaine nūber of Capōs or Hens, or a paire of Gloues, or certaine bushels of wheat, and such other manner things. But in some case the Lord ought to abide to distraine for his relieſe till a certaine time. As if the Tenant hold of his Lord by a rose, or by a bushell of roses, to pay at the feast of S. John Baptist. If such a Tenant dye in winter, then the Lord may not distraine for

his relieſe &c. vntill the time that the Roſes by the courſe of the yeare may haue their growings, &c. Et ſic de ſimilibus.

Alſo, if any peraduenture will aſke why a man may hold of his Lord by fealty onely for all maner of ſeruices, inſomuch, that when the tenant ſhall make his fealty, he ſhal ſweare to his Lord that he ſhall doe all ſeruices due, & when he hath made fealty in ſuch caſe, there is none other ſeruice due: To this it may be ſaid, that where the tenant holdeth his land of his Lord, it behoooueth that he ought to doe to his Lord ſome maner of ſeruice, for if the Tenant nor his heires ought to doe no manner of ſeruice to his lord, nor to his heire, thē by long time continued it ſhould be out of remembrance of whom the land was holden, of the Lord, or of his heire, or not, & then more oft & more ſooner will men ſay, that the land is not holden of the Lord nor of his heires, then otherwiſe; & vpon this the Lord ſhall looſe his Eſcheate of his land, or perchaſe other forfeiture or profite that he might haue of the Land: So it is reaſon that the Lord & his heires haue ſome ſeruice done vnto him, for a proofe, & a witnes that the land is holden of them, and becauſe fealty is incident to all maner tenures, except tenure in Frankalmoign, as ſhalbe ſaid in Frankealmoigne, & becauſe that the Lord will not at the beginning of the tenure haue any other ſeruices but fealty, it is reaſon that a mā may hold of his Lord onely by fealty, and when he hath made

made his fealty, he hath done all his seruice.

Also, if a man let to another for terme of life certaine lands or tenements, without speaking of any thing to yeeld to the lessor, yet hee shall doe to the lessor fealty, for that he holdeth of him. And if a Lease bee made to a man for terme of yeres, it is said the lesee shall doe to the lessor fealty, for that he holdeth of him. And this is proued well by the words in a writ of Waste, when the lessor hath cause to bring a writ of Waste against him, the which writ shal say, that the lessee holdeth the tenements of the lessor for terme of yeres: so that writ proueth a tenure betweene them &c. But he that is tenant at will after the course of the Common Law, shall not make fealty, because he hath no manner of a sure estate. But otherwise it is of tenant after custome of the mannor, because that he is bound to doe fealty to his Lord for two causes: One is because of custome, the other is because that he taketh his estate in such forme to doe fealty.

Franke almoigne.

TEnant in Franke almoigne is, where an Abbot or Prior, or another man of Religion, or of holy Church, holdeth of his Lord in Franke almoigne: that is to say in Latine, in liberam Eleemosynam, that is to say, in free almes. And such tenure began first in old time when a man in olde time was seised of lands or tenements in his demeine as of fee, and of the

the same Land enfeoffed an Abbot and his conuent, or Prior and his Couent, to haue and to hold to them and their successors in pure and perpetuall almes, or in Franke almoigne, or by such words, to hold of the graunter, or of the lessor and his heires in free almes. In such case the tenements were holden in Franke almoigne. And in the same manner it is, where the Lands or Tenements were graunted in olde time to a Deane and Chapter, and to their successours, or to a Parson of a Church, and to his successors, or to any other man of holy Church, and to his successours in free almes, if he had capacitie to take such grants or feoffements, &c. And such as hold in free almes, be bound of right afore God to do Orisons, Prayers, and Masses, and other diuine seruices for the soules of the grantors or feoffors, or for the soules of their heires which bee dead, and for the prosperity & good life of them that be aliue.

And for this they doe at no time no manner of fealty vnto their Lords, for that such diuine seruice is better for them before GOD, then any doing of Fealty. And also these words, free almes or franke almoigne, exclude the lord to haue any worldly or temporall seruice, but onely to haue diuine and spirituall seruice to bee done for him, &c. And if such that hold their tenements in free almes, or franke almoigne will not, or faile to doe such Diuine Seruice, as is said, the Lord may not

distraine

distraine them for the seruices vndone &c. because it is not set in certaine, what seruice they ought to doe: but the Lord may of them complaine to their Ordinary, praying him that he will set punishment and correction of that: And also to prouide & see that such negligence be no more done: And the Ordinary of right ought to doe that, &c.

But where an Abbot or a Prior holdeth of his Lord by certaine diuine seruice in certain to be done, as for to sing a Masse euery friday in the weeke, for the Soules &c. or euery yere at such a day to sing Placebo & Dirge &c. or to find a Chaplein to sing Masse &c. or to distribute in almes to an hundred poore men, an hundred pence at such a day, in such case, if such diuine seruice bee not done, the Lord may distraine &c. for that this diuine seruice is in certain by their tenure what the Abbot or the Prior ought to do. And in such case the Lord shall haue fealty &c. as it seemeth.

And such tenure is not said tenure in free almes, but it is said tenure by diuine seruice, for in tenure in free almes, or Frankalmoigne, no mention is made of any manner certaine seruice, for none may hold in free almes or frankalmoigne if there be expressed any maner certaine seruice that he ought to doe.

And if it bee demaunded, if the Tenaunt in frankmarriage shall doe Fealty to the donour or to his heires before the fourth degree bee passed &c. It seemeth that yea, for hee is not like

like as to this intent to a tenant in frée almes or frankalmoigne, for the tenant in frée almes shall do (because of his tenure) diuine seruice for the Lord as it is aforesaid, and that hee is charged to doe by the law of holy Church, and for that he is excused and discharged of fealty. But tenant in frankmarige doth not by his tenure such seruice.

And if he doe not to his Lord fealty, then he doth not to his Lord any manner of seruice neither spirituall nor temporall, which should be an inconuenience and against reason, that a man should haue estate of inheritance of an other, and yet the Lord shall haue no maner of seruice of him as it seemeth, and so it seemeth that hee shall doe fealty to his Lord vntill the fourth degrée be past &c. And when hee hath done fealty, he hath done all his seruice. And if an Abbot hold of his Lord in frée almes, and the Abbot and his Couent vnder their common seale alien the same land to a seculer man in fée simple, in this case the secular man shall do fealty to the Lord, for that he may not hold of his Lord in free almes: For if the Lord ought not to haue of him fealty, then hee shall haue of him no maner of seruice which should bee an inconuenience, where hee is Lord and the tenements are holden of him.

Also if a man grant at this day to an Abbot or to a Prior, Lands or Tenements in free almes, or franke almoigne, these words free almes or franke almoigne bee voyde, for that

if

it is ordained by the Statute which is called Quia emptores terrarum, which Statute was made Anno 18. Regis E. primis, That no man may alien or grant Lands or tenements in fee simple to hold of himselfe, so that if a man bee seised of certain lands or tenements which he holdeth of his Lord by knights seruice, and at this day he graunteth the same land to an Abbot &c. in free almes, or franke almoigne, the Abbot shall holde immediatly the same Tenements by Knights seruice of the Lord of his grauntor, because of the same estatute: so that no man may hold in free almes, or in franke-almoigne, but if it be by title of prescription, or by force of a graunt made to some of his predecessors before the same estatute: But the King may giue Lands or Tenements in fee simple to hold in free almes or frankalmoigne, or by other seruice, for he is out of the case of the statute. And note well, that no man may holde Lands or Tenements in free almes, but of the grauntor or his heires, and that for the priuity of the gift: and therefore it is said, that if there be Lord, Meine, and Tenant, and the tenant is an Abbot that holdeth of his meine in franke almoigne, if the meine die without heire, then the meinalty shall come by escheate to the said Lord aboue, and the Abbot then shall hold of him immediately onely by fealty, and shall doe him fealty, for that he may not hold of him in franke almoigne &c.

And note well, where that such a man of seis-

religion holdeth his lands of his Lord in free almes &c. his Lord is bound by the Lawe to acquite him of euery maner of seruice that any Lord aboue him will demaund or aske of the same Tenants. And if he acquite him not, but suffer him to bee distrained &c. then hee shall haue against his Lord a writ of Meine, & recouer his damages and costes of his suit.

Homage auncestrell.

TEnure by Homage auncestrell is, where a tenant holdeth his land of his Lord by homage, and the same tenant and his auncesters whose heire he is, haue held the same Land of the said Lord, and of his auncesters, whose heire the lord is, from time out of mind by homage, & haue done homage vnto him: which is called Homage auncestrell, because of the continuance which hath beene by title of prescription in the tenancie, in the bloud of the tenant, & also in the lordship in the bloud of the Lord. And such seruice by homage auncestrell draweth to it warranty: if the Lord that is aliue hath receiued homage of such Tenaunt, hee ought to warrant his tenant when hee is impleaded of the lands holden of him by homage auncestrell. And all such seruice by Homage auncestrell draweth it to acquittance, that is to say, the Lord ought to acquite his Tenaunt against all other Lords aboue him of euery maner of seruice. And it is said, that if such tenant bee impleaded by a Præcipe quod red-

reddat &c. and he voucheth his Lord to warranty, which commeth in by processe, and asketh the Tenant what hee hath to binde him to warranty, and he sheweth how hee and his auncestors, whose heire he is, haue holden the Land of the Vouchée and of his auncestors whose heire hee is, by Homage from time out of mind: if the Lord which is vouched receiued none homage of the tenaunt, nor of any of his auncestors, the Lord then, if he will, may disclaime in the Lordship, and so put out his Tenaunt of his warranty. But if the Lord which is vouched hath receiued homage of the Tenaunt, or of any of his ancestors, then may he not disclaime, but he is bound by the law to warrant the Tenant, & then if the tenant lose the land in default of the vouchée, he shall recouer in value against the vouchée of the Lands or Tenements that the vouchée had at ꝑ time of the voucher, or at any time after.

And it is to wit, that in euery case where the Lord may disclaime in his lordship by the Law, in Court of Record, and of that will disclaime, his seigniory is extinct, and the tenaunt shall hold of the lord next aboue his lord which so disclaimeth. But if an Abbot or Prior bee vouched by force of Homage auncestrell &c. though hee haue neuer taken Homage &c. yet hee cannot disclaime in this case, nor in none other case, for they cannot deuest that thing in fee, which hath beene vested in their house, Paschæ 10. Ed. 4.

Also

Alſo if a man that holdeth his Land by homage aunceſtrell alieneth his Land to another in fee, the alienee ſhall do homage to his Lord: But hee holdeth not of his Lord by homage aunceſtrell, for that the tenancy was not continued in the bloud of his anceſtors of the alienée, nor the alienée ſhall neuer haue the warranty of his land of the Lord, for that the continuance of the tenancy in the tenant & in his bloud by the alienation is diſcontinued. And ſo ſée, that if the Tenant that holdeth his land by Homage aunceſtrell of the Lord, and ſuch a Tenant alieneth in fée, though that he take eſtate of the alienee againe in fee, hee holdeth the land by Homage, but not by homage aunceſtrell.

Alſo it is ſaid, that if a man hold his Land of his Lord by homage and fealty, and he hath made homage and fealty to his Lord, and the Lord hath iſſue a Sonne and dyeth, and the Lordſhip deſcendeth to his ſon: In this caſe the Tenaunt which did Homage to the father, ſhall not doe Homage to his Sonne, for that when a tenant hath made once homage to his Lord, hee is is excuſed for terme of his life to make homage to any other heire of the Lord. But yet he ſhall doe fealty to the ſonne & heire of his Lord, though that he made fealty to his father.

Alſo, if the Lord after the Homage to him made by his tenaunt, graunt the ſeruice of his Tenaunt by deed vnto another in fée, and the te-

Tenaunt attorneth &c. the Tenant shal not be compelled to do homage, but he shall doe fealty, though hee did fealty before to the graunter, for Fealty is incident to euery attornement when the Lordship is graunted. But if a man bee seised of a Mannor, and another man holdeth his land of him as of ẏ Mannor aforesaid by homage, the which hath done homage to his Lord which is seised of the manor, if after that a straunger bring a Præcipe quod reddat against the Lord of the manor, and recouereth the Manour against him, and sueth execution &c. in this case the Tenant shal once againe do homage to him that recouereth the manor, for that the estate of him which receiued homage before is defeated by the recouery. And it shall not lye in the mouth of the tenant to falsifie or defeate the recouery which was against his Lord. And so see the diuersity in this case, where a man commeth to his Lordship by recouery, and where hee commeth by descent, or graunt of the Seigniory.

And if a Tenaunt which ought by his tenure to doe Homage to his Lord, come to his Lord and say to him, Sir, I owe to doe vnto you homage for the Tenements that I hold of you, and I am ready to do you homage for the same tenemẽts, for the which I pray you that yee will now receiue it, and if the Lord then refuse to receiue it, then after such refusall the Lord may not distrain the Tenant for the homage, before that the Lord require the tenant

to doe homage, and the tenant refuse to do it.

Also a man may hold his Land by homage auncestrel, & by Escuage, or by other Knights seruice, as well as hee might hold his land by Homage auncestrell in Socage.

Graund Serieantie.

TEnant by Graund Serieantie is, where a man holdeth his lands or tenements of our soueraigne Lord ye King, by the seruice which he ought to do in his own proper person, as to beare the kings Banner, or his Speare, or to lead his host, or to be his Marshall, or to beare his sword before him at his Coronation, or to be his Sewer at his Coronation, or his Caruer, or Butler, or to be one of his Chamberlaines of his receit of his Exchequer, or to doe such seruices &c. And the cause wherefore such seruice is called Graund Serieantie, is for that it is more honorable, and worshipfull, and digne, then is the seruice of the tenure by Escuage, for he that holdeth by Escuage, is not limitted by his tenure to doe any more especiall seruice, then any other that holdeth by Escuage ought to doe. But he that holdeth by Graund Serieanty, ought to doe some especiall seruice to the King, that hee that holdeth by Escuage ought not to doe.

Also if the Tenant which holdeth by Escuage die, his heire being of full age, if he held by a knights fee, the heire shal pay but an C.S. for his

his relieke, as it is ordained by the Statute of Magna char. cap. 2. But he that holdeth of the king by Graund serieanty, and dieth his heire being of full age, shall pay vnto the king for his relieke, the value of his lands or tenements by the yeere, besides the charges & reprises, which he holdeth of the King by Graund serieantie. And it is to wit, that Serieantia in Latine is seruitium, and so Magna serieantia, is Magnum seruitium, that is to say, a great seruice.

Also those which hold by Escuage ought to do their seruice out of the realme, but they that hold by Graund Serieanty for the most part ought to do their seruice within the Realme.

And it is said, that in the marches of Scotland some hold of the King by Cornage, that is to say, to blowe an Horne for to warne the men of the Countrey &c. when they heare that the Scots or other enemies will come to enter into England &c. which seruice is Graund Serieanty &c. But if any tenant hold of any other Lord then of the King by such seruice of Cornage, that is not Graund serieanty, but it is Knights seruice, and draweth to it warde, marriage, and relieke, for none may holde by Graund serieanty, but of the King onely.

Also a man may see in the 11. yeere of Henrie the 4. fol. 27. that Cokein then being chiefe Baron of the Eschequer came into ꝑ common Place, bringing with him a copy of a Record in these words, Talis tenet tantam terram de domino Rege per Serieantiam, ad inueniendū

vnum hominem ad guerram infra quatuor maria, &c. that is to ſay, ſuch a man holdeth ſo much land of our ſoueraigne Lord the King by ſerieantie, to find one man appointed for the warre within the foure Seas, and he demaunded whether it was Graund serieanty or petie serieanty: and Hank. then ſaid, that it was Graund serieanty, for that it was ſeruice to bee done by the body of a man, and if that he may not find a man to doe ſeruice for him, hee muſt doe it himſelfe: to whom the other Iuſtices aſſented. Cokaine then ſaid, the tenant in this caſe ſhal pay reliefe to the value of the lād by yeare, to the which was none anſwere. And note, that all they that hold of the King by Graund ſerieanty, hold of the king by knights ſeruice, and the king of that ſhall haue ward, mariage, and reliefe, but the king ſhal not haue of them Eſcuage, if they hold not by Eſcuage.

Petie Serieanty.

TEnant by Petie Serieantie is, where a man holdeth his Land of our Soueraigne Lord the King, to yeeld vnto him yearely a Bowe, a Sword, a Dagger, or a Knife, or a ſpere, or a paire of gloues of maile, or a paire of ſpurs gilt, or an arrow, or diuers arrowes, or to yeeld ſuch other ſmall things touching the warre, and ſuch ſeruice is but Ocage in effect, for that that the Tenant by his tenure ought not to goe, nor to doe any thing in his owne

owne proper person touching the warre. But to yeld and pay yearely certaine things vnto the King, as a man ought to pay a rent.

And note, that no man holdeth Land by Graund sericanty, nor by Petie sericanty, but of the King.

Burgage.

TEnure in Burgage is where an auncient Borough is, of the which the King is lord, and they that haue tenements within the Borough hold of the King their tenements, that euery tenant for his tenement ought to pay to the King a certaine rent by yere &c. And such tenure is but tenure in socage. And the same manner is where another Lord spirituall or tempozall is Lord of such a Borough, and the tenants of the tenements in such a Borough hold of their Lord to pay each of them yerely an annuall rent: and it is called tenure in burgage, for that the tenements within the Borough bee holden of the Lord of the Borough by certaine rent &c. And it is to wit, that the auncient Townes called Boroughes, be the most auncient & eldest Townes that be within England, for the Townes that now bee Cities or Counties, in olde time were Boroughs, and called Boroughes, for of such old Townes called Boroughes, come the Burgesses of the Parliament, to the Parliament when the king hath summoned his parliamēt

Also for the greater part, such Boroughes haue diuers customes and vsages which bee not had in other townes, for some Boroughes haue such a custome, that if a man haue issue many sonnes and dyeth, the yongest sonne shal inherite all the tenements which were his fathers within the same Borough as heire vnto his father, by force of the custome, the which is called Borough English.

Also in some Boroughes by the custome, the wife shall haue for her Dower all the tenements which were her husbands.

Also in some Borough by the custome, a man may deuise by his Testament his Lands & tenements which he hath in fée simple within the same Borough at the time of his death, and by force of such deuice, hee to whome such deuise is made after the death of the Deuisor, may enter into the tenements to him deuised, to haue and to hold to him after the forme and effect of the deuise without any liuery of seisin thereof to be made to him.

Also, though a man may not graunt nor giue his Tenements to his Wife during the couerture, for that that his wife and he be but one person in the Law, yet by such custome he may deuise by his Testament his tenemẽts to his wife, to haue and to hold to her in fée simple, or in fée tayle, or for terme of life, or peres, for that such deuise taketh no effect, but after the death of the deuisor. And if a man at diuers times make diuers Testaments, and

diuers deuices, &c. yet the laſt deuiſe and will made by him, ſhall ſtand and abide.

Alſo, by ſuch cuſtome a man may deuiſe by his Teſtament, that his executors may alien and ſell the tenements that hee hath in fée ſimple, for a certaine ſumme, to diſtribute for his almes: In this caſe though the deuiſor die ſeiſed of the Tenements, and the tenements deſcend vnto his heire, yet the executors after the death of the teſtatour, may ſell the tenements ſo deuiſed, and put out the heire, and thereof make a feoffement, alienation, & eſtate by déed, or without déede, to them to whome the ſale is made vnto.

And ſo may yée ſée a caſe, where a man may make a lawfull eſtate, and yet he hath nought in the tenemẽts at the time of the eſtate made: And the cauſe is for that, that the cuſtome and vſage is ſuch, Quia conſuetudo ex certa cauſa rationabili vſitata, probat communem Legem: For a cuſtome vſed vpon a certaine reaſonable cauſe, proueth the Common Law.

And note well, no cuſtome is to bee alowed, but ſuch cuſtome as hath béene vſed by title of preſcription, that is to ſay, from time whereof is no mind. But diuers opinions haue béene of time out of mind, and of title of preſcriptiõ, which is all one in the law, for ſome men haue ſaid, that the time of mind, ſhould bee ſaid for time of limitatiõ in a writ of Right, that is to ſay, from the time of King Richard the firſt after the Conqueſt, as is giuen by the ſtatute of

westminster the first, for that a writ of Right is the most highest writ in his nature that may be. And in such a writ a man may recouer his right of the possession of his auncesters, of the most ancient time that any man may by any writ by the law. And in so much that it is giuen by the said estatute, that in such a writ none shall bee heard to alke of the seisin of his ancestors of more longer time, then of the time of King Richard aforesaid, therefore this is proued, that continuance of possession, or other customes and vsages vsed after the same time is title of prescriptiō, and this is certaine. And other haue said, that well and truth it is, that seisin and continuance after the limitation &c. is a title of prescription, as is aforesaid, and by the cause aforesaid. But they haue said that there is also another title of prescription that was at the Common law, before any estatute of limitation of writs &c. And that it was where a custome or vsage, or other thing had beene vsed, for time whereof the mind of man runneth not to the contrary: And they haue said that this is proued by the pleading, where a man will pleade a title of prescription of custome &c. hee shall say that such custome hath beene vsed from time whereof the memory of men runneth not to the contrary, that is as much to say, when such a matter is pleded, that no man thē aliue hath heard any proofe to the contrary, nor hath no knowledge to the contrary: and in so much that such title of pre-

scription

ſcription was at the Common Law, and not put out by any eſtatute, Ergo, it abideth as it was at the Common Law, and the ſooner, inſomuch that the ſaid limitation of a Writ of Right, &c. is of ſo long time paſſed. Ideo quære de hoc. And many other cuſtomes and vſages haue ſuch ancient boroughes.

Alſo euery Borough is a Towne, but not the contrary. More ſhalbe ſaid of Cuſtomes in the tenure of Villenage.

Villenage.

TEnure in villenage is moſt properly when a Villeine holdeth of his Lord (to whome he is villein) certaine lands & tenements after the cuſtome of the Mannor, or elſe at the will of his Lord, & to do his lord villein ſeruice, as to beare, bring, and carry out the dung & filth of the Lord vnto the land of the Lord, there to lay it, caſt it, & ſpred it abroad vpon the Land, and to doe ſuch other manner of ſeruice. And ſome free tenants hold their tenements after the cuſtome of certain manors by ſuch ſeruice, and their tenure is called tenure in villenage, and yet they be no villeines, for no Land holden by Villenage, or villeine lands, or any cuſtome riſing of the Land, ſhall euer make a free man Villeine: But a Villeine may make free land to be villein land vnto his Lord. As if a villeine purchaſe Land in fee ſimple, or in fee taile, the lord of the villeine may enter into the land, and put out the Villeine & his heires for euer,

euer, & after the Lord (if hee will) may let the same land to the villeine, to hold in villenage.

Also if a Feoffement be made to a certaine person or persons in fee, to the vse of a villeine, or if a Villeine, with other persons be infeoffed to the vse of a villeine, what estate soeuer the villein hath in the vse, in fee taile, for terme of life, or yeares, the Lord of the villeine may enter in all those Lands and tenements, likewise as if the Villein had beene alone seised of the demesne: And that is by the Statute of An. 19. H. 7. cap. 15. But if a free man will take any lands or tenements of his Lord by such Villeine service, that is to say, to pay a fine to his Lord for his marriage, or for the mariage of his sonne, or his daughter, then shall he pay such a fine for the mariage &c. for that it is the folly of such a free man, to take in such forme Lands or Tenements to hold of his Lord by such bondage, yet that maketh not the free mā Villeine.

Also, euery Villeine, either he is villeine by prescription, that is to say, hee and his auncesters haue beene villeines time out of mind, or he is villeine by his owne confession in Court of Record. But if a free man haue diuers issues, and after confesseth himselfe to be villein to another in Court of Record, yet his issues which he hath before the confession be free, but the issues which he shall haue after the confession &c. shall be Villeines.

Also, if a villeine purchase Lands and alieneth

neth the same lands to another before his lord enter, then the Lord may not enter, for it shall bee iudged his owne folly that hee entred not when the Land was in the Villeines hands. And so it is of his other goods, for if the Villeine buy and sell, or giue goods to another before that the Lord seise the goods, then the lord may not seise thē: But if the Lord before any such sale or gift commeth within the house of the villein where such goods be, & there openly among the neighbors claime the same goods to be his, and so seise parcell of the same in name of seisin of all his goods, &c. this is said a good seisin in the law. And the occupation that the villein hath after such claime in the goods, shall be taken in the law, in the right of the Lord. But if the King haue any villeine that purchaseth lands, & alieneth before that the King enter, yet the King may enter in the Land in whose hands soeuer the Land commeth: Or if the villeine buy or sell diuers goods before that the King seise the goods, yet the King may seise them in whose hāds soeuer they be, Quia nullum tempus occurrit Regi, for no time runneth against the King.

Also if a man let Land to an other for terme of life, sauing the reuersion to him, and a villeine purchaseth of the lessour the reuersion, in this case it seemeth that the Lord of the Villeine may incontinent come to the Land, and claime the same reuersion as Lord of the same Villeine, and by this claime, the

the reuerſion is incontinent in him, for in any other forme he may not come to the reuerſion, for he may not enter vpon the tenant for terme of life: And if he ought to attend till after the death of the tenant for terme of life, then happily hee might come too late, for peraduenture the Villeine will graunt or alien to an other in the life of the tenant for terme of life. In the ſame manner it is where a villeine purchaſeth the Aduowſon of a Church full of an incumbent, that the Lord of the villeine may come to the ſaid Church and clayme the Aduowſon. And by this claime the Aduowſon is in him, for if he abide till after the death of the incumbent, and then preſent his Clerke to the ſaid Church: Then in the meane time the villeine might alien the Aduowſon &c. and ſo put out the Lord from his preſentation.

Alſo there is a villeine regardant and a villeine in groſſe. Villeine regardant is as if a man be ſeiſed of a Mannour, to which a villein is regardant, and he that is ſeiſed of the ſaid Mannour, or they whoſe eſtate he hath in the ſame Manour haue been ſeiſed of the ſaid villeine and of his auncеſters as villeines regardant to the Mannour from time out of mind. And villeine in groſſe is where a man is ſeiſed of a Manour, to the which a villeine is regardant, & graunteth the ſame villeine by his deede vnto another, then hee is a villeine in groſſe, and not regardant.

Alſo if a man and his auncеſtours whoſe

heire

heire he is, haue beene seised of a Villeine and of his auncestors, as villeines in grosse time out of minde, such beene Villeines in grosse. And note well, that of such thinges which may not bee graunted nor alienated without deede or fine, a man that will haue such things by prescription may not otherwise prescribe but in him, and his auncestors whose heire he is, and not by these words, in him and whose estate hee hath, for that that hee may not haue their estate without deede or writing, the which behoueth to be shewed to the Court, if hee will haue any aduantage of this: and because that the graunt and the alienation of a Villeine lyeth not without deede or other writing, a man may not prescribe in a villeine in grosse without shewing of writing, but in himselfe that claymeth the Villeine, and in his auncestors whose heire hee is. But of those thinges which bee regardant or appendant to a Manour, or to other Lands or Tenements, a man may prescribe that hee and they whose estate hee hath were seised of the Manour, or such Lands or Tenements, as regardants or appendants to the Mannour, or to such Lands or tenements &c. from time out of minde: and the cause is for this, that such a Manour, Lands and tenements, may passe by alienation without deede &c. And it is to wit, that nothing is named regardant to a Mannour but a Villeine. But certaine other theings, as Aduowsons and

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Common of pasture &c. be named appendants to the Manour, or to other Land and Tenements.

Also if a man in Court of Record knowledge himselfe to be villein that never was villeine before, such one is villeine in grosse.

Also, a man that is Villeine is called Villeine, and a woman that is Villeine is called Niefe. And a man that is outlawed is called an Outlaw, and a woman that is outlawed is called a Waife.

Also, if a villeine take a free woman to wife, the issue betweene them shall be villeine. But if a Niefe take a free man to Husband, their issue shall be free. And that is contrary to the Law Civill, for there is said, that partus sequitur ventrem.

Also no Bastard may bee Villeine, but if that hee will knowledge himselfe to bee Villeine in Court of Record, for hee is in the Lawe, quasi nullius filius, as the sonne of no man, for that hee may bee inheritour to no man.

Also every villeine is able and free to sue all manner of actions against every person, except against his Lord to whom he is villeine: and yet in certaine things hee may haue against his Lord on action, as of Appeall for the death of his father, or of his other auncestors whole heire hee is. Also a Niefe which is ravished by her Lord may haue Appeale of Rape against him.

Also

Alſo, if a Villeine bee made Executor to an other, and the Lord of the villeine was indebted to the teſtator in a certaine ſumme of money, the which is not payed: In this caſe the villeine as executor to the teſtator, ſhall haue an action of Debt againſt his Lord, becauſe he ſhall not recouer his debt to his proper vſe, but to the vſe of the teſtator.

Alſo the Lord may not take out of the poſſeſſion of ſuch a Villeine, that is Executor, the deads goods, and if he doe, the Villeine as Executor ſhall haue an action of Treſpaſſe againſt his Lord for the ſame goods ſo taken, and recouer damages to the vſe of the teſtator. But in all theſe caſes it behooueth the Lord (which is defendant in ſuch actions) to make proteſtation that the plaintife is his villein, or elſe the Villeine ſhall be infranchiſed, though the matter bee found for the Lord againſt the Villeine, as it is ſaid.

Alſo if a Villeine ſue an action of Treſpas, or other Action againſt his Lord in one ſhire, and the Lord ſaith, that he ſhall not bee anſwered, for that he is Villeine regardant to his Mannor in another Shire, and the plaintife ſaith, that hee is franke and of free eſtate, and no Villeine, this ſhall bee tryed in the Shire where the plaintife hath conceiued his Action, and not in the Shire where the Manour is, and this is in fauour of liberty, as it is adiudged Mich. 40. of Edward the third.

And

And for this cause was made a statute in ninth yeare of Richard the second, the tenour of which insueth in such forme.

Also for that, where many Villeines and Nieces, as well of great Lords as of other folke spirituall & temporall, flie and goe into Cities and places franchised, as the Citie of London, and other like places, and faine diuers suites against their Lords, because they would make themselues to be infranchised, it is accorded and assented that the Lords, nor none other shalbe forebarred of their villeines, because of their aunswere in the law By force of which Statute, if any villeine will sue any maner of action to his owne vse in any Shire where it is hard to try, &c. against his Lord, his Lord may chuse to plead that the plaintife is his villeine, or to make protestation that he is his villeine, and to plead another matter in bar, and if they be at issue, & the issue bee found for the Lord, then the Villeine, is Villeine as hee was before, by force of the same Statute: But if the issue be found for the Villeine, then is the villeine franke & free, for that the Lord toke not for his plee, that the villeine was his villeine, but toke it by protestation.

Also, the Lord may not mayme his Villeine, for if hee mayme his Villeine, he shall of that be indicted at the Kings suit. And if hee be of that attainted, he shal for that make greeuous fine and ransome to the King. But it seemeth that the villeine shall not haue by the

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law any appeale of Maime against his Lord, for in appeale of Mayme a man shall not recouer but his damages. And if the Villeine in that case recouer damages against his Lord, and hath thereof execution, the Lord may take that that the Villeine hath in execution from the Villeine, and so the recouery standeth voyd.

Also if the villeine bee demandant in an action reall, or plaintife in an action personall against his Lord, if the Lord will plead in disability of his person, hee may not make plaine defence, but he shall defend but the wrong and the force, and demaund iudgement if hee shall bee answered, and shew his matter by and by how hee is villeine, and demaund iudgement if he shall be answered.

Also, sixe manner of men there be against whome if they sue actions &c. iudgement may bee asked if they shall be aunswered: One is, where the Villeine sueth an action, &c. against his Lord, as in case aforesaid. The second is, where a mā is outlawed vpon an actiō of debt or Trespas, or vpon any other action or Indictment, the Tenant, or the Defendant may shew all the matter of the Record and the outlawry, and demaund iudgement if hee shall bee answered, because that he is out of the law to sue an action during the time that hee is outlawed. The third is, where an alien borne out of the allegeance of our Soueraigne Lord the King, if such alein sue an action reall or

perſonall, the tenant or defendãt may ſay, that he was borne out of the kings allegeance, and aſke iudgement if he ſhall bee aunſwered. The fourth is, where a man by iudgement giuen againſt him vpon a writ of Præmunire facias, &c. is out of the Kings protection, if he ſue any action, & the tenant or defendant ſhew all the Record againſt him, he may aſke iudgement if he ſhall be anſwered, for the Law & the kings writs bee the things by which a man is protected and holden, and ſo during the time that a man in ſuch caſe is out of the kings protection, hee is out of helpe and protection by the Kings Lawe, or by the Kings writ. The fift is, where a man is entred and profeſſed into Religion, if ſuch a perſon ſue an action, the tenant or defendant may ſhew that ſuch a one is entred into Religion in ſuch a place, into the order of Saint Bener, and is there a Monke profeſſed, or in the order of Friers Minors or Preachers, and is there a Frier profeſſed, and ſo of other orders of religion &c. and aſke iudgment if he ſhall be anſwered, and the cauſe is this, that when a man entreth into Religion, and is profeſſed, hee is dead in the Law, and his ſonne or next coſin incontinent ſhall inherite him, as well as though hee were dead indeed, and when he entreth into Religion, hee may make his Teſtament and his executors, and they may haue an action of debt due to him before his entry into religion, or any other action that executors may haue, if he were dead

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in deed. And if he make none executors when hee entreth into Religion, then the Ordinary may commit the administration of his goods to others, as if hee were dead indeed. The first is, where a man is accursed by the Lawe of holy Church, & he sueth an action reall or personall, the tenant or defendant may plead that he that sueth is accursed, & of this it behoooueth him to shew the Bishops Letters vnder his seale, witnessing the accursing, and aske iudgement if he shalbe answered &c. but in this case if the demaundant or plaintife cannot deny it, the writ shal not abate, but the iudgment shal be, that the tenant or defendant shall goe quite without day, for this, that when the demaundant or plaintife hath purchased his letters of absolution, and shewed them to the Court, he may haue a Resummons or a Reattachment vpon his original, after the nature of his writ &c. But in the other cases the writ shall abate &c, if the matter shewed may not be gainsaid.

Also if a Villeine be made a secular Priest, yet his Lord may seise him as his villeine, and seise his goods &c. But it seemeth, that if the villeine enter into religion and is professed &c. that the Lord may not take him, nor seise him, for that he is dead in the Law: And no more then if a free man take a Nieke to his wife, the Lord may not take nor seise the wife of the Husband: But his remedy is to haue an action against the Husband, for that her tooke his Nieke to wife without his will,

and so may the lord haue an action against the Soueraigne of the house that taketh & admitteth his villeine to be professed in ỹ same house without licence and will of his Lord &c. and shall recouer his damages to the value of the villeine, for he that is professed Monke &c. shal be a Monke, & as a Monke shall be taken for terme of his life naturall, except he be deraigned by the Law of the holy Church, and he is holden by his religion to kepe his cloister, and if the Lord may take him out of the house, then hee should not liue as a dead person, nor after his religion, which should be inconuenient, &c. For if there be Warden in Chiualry of bodie and Lands of a childe within age, if the childe whē he commeth to the age of xiiij. yeres enter into Religion & is professed, the warden hath none other remedy, as to the ward of the body, but a writ of Rauishment of Ward against the Soueraigne of the house. And if any being of full age, that is cosin and heire vnto the child enter into the Land, the warden hath no remedy as to the Ward of the Land, because that the entrie of the heire of the childe is lawfull in such case.

Also in many other cases the Lord may make Manumission and infranchising to his Villeine. Manumission is properly when the Lord maketh his deed to his villeine to infrāchise him by this word Manumittere, which is as much as to say, as extra manum, & extra potestatem alterius ponere, as to put him out

of

of the hands and the power of another. And for this that by such a deed the Villeine is put out of the hand and power of his Lord, it is called Manumission. And so every manner of infranchising made to a villeine, may be said a Manumission. Also if the Lord make to his Villeine an Obligation for a certaine summe of money, or graunt vnto him by his deede an annuitie, or let him by his deed, Lands or tenements for terme of yeares, the villeine is infranchised. And if the Lord make a feoffement to his villeine of any Lands or Tenements by deede, or without deede, in fée simple, or fée taile, or for terme of yeares, and deliuereth vnto him the seisin, this is an infranchising: But if the Lord make to him a Lease of Lands or Tenements to hold at the will of the Lord, by deede, or without deede, this is no infranchising, for that he hath no maner of certainty nor surety of his estate, but that the Lord may put him out when hee will. Also, if a Lord sue against his villeine a Præcipe quod reddat, if hée recouer, or be nonsuit after apparance, this is manumission, for this that hee may lawfully enter into the land without such suite. In the same manner it is if he sue against his Villeine an action of Debt, or of Accompt, or of Couenant, or of Trespasse, or such other, this is an infranchising &c. for this that he may imprison his villeine, & take his goods without such suit. But if the Lord sue his Villeine by Appeale of Felonie, this is

none infranchising to the Villeine, though the matter of the appeal is found against the lord, because that the lord may not haue the villeine hanged without such suit. But if the Villeine were not indicted of the same felony before the appeal sued against him, and is acquited of the felony, so that he recouer damages against the lord for the false appeal: Then in this case the villein is infranchised, because of the iudgmēt of damages that was giuē to him against his Lord. And more cases & matters there be by ẏ which a villeine may be infranchised against his Lord, Sed de illis quære. Also if a Lord of a Manor wil prescribe that it hath bin accustomed within his manor, time out of mind, that euery Tenant within the same Mannor that marrieth his daughter to any man without licence of the Lord of the manor shall make fine to the Lord for the time being, this prescription is void, for none ought to make such fines but onely Villeines, for euery frée man may frēely marry his daughter to whom it pleaseth him and his daughter. And because that this prescription is against reason, such prescription is void. But in the shire of Kent of lands holden in Gauelkind, where by the custome vsed time out of mind, the childrē males ought euenly to inherite, this custome is allowable, for this that it is with some reason, because that euery Sonne is as great a Gentl. man as the elder Son, and because of that to more great honour and valure shall growe, then if

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he had nothing by his anceſtors, where peradventure he might not ſo grow &c.

Alſo, where by the cuſtome called Borough English, in ſome Borough the yongeſt ſonne ſhal inherit all the tenements, &c. this cuſtome alſo ſtandeth with reaſō, becauſe that the yonger ſonne if hee lacke father and mother, (becauſe of his yong age) may leaſt of all his brethren helpe himſelfe &c. But if a man will preſcribe, that if any cattel were vpon ꝑ demeans of the manor, there doing damage, ꝑ the Lord of the Mannor for the time being hath vſed to diſtraine them, & the diſtres to retaine till fine were made to him for the damages at his wil, this preſcription is void, becauſe it is againſt reaſon, that if wrong be done any man, that he thereof ſhould be his owne Judge, for by ſuch way if he had damages but to the value of an halfpenie, he might aſſeſſe & haue therefore an C. l. which ſhould be againſt all reaſon. And ſo ſuch preſcription, or any other preſcription vſed, if it be againſt all reaſon, this ought not, nor will not be allowed before Judges, Quia malus vſus abolendus eſt.

Rents.

THree manner of Rents there be, that is to ſay, Rent ſeruice, Rent charge, and Rent ſecke. Rent ſeruice is, where a man holdeth his land of his Lord by fealty & certaine rent, or by other ſeruice, and certaine rent, or by homage, fealty, and certaine rent, and if rent

ſeruice at any day that it ought to be payed, be behinde, the Lord may diſtraine for that of common right. And if a man now will giue Lands or tenements to another in the taple, yeelding to him certaine rent by the yeere, he of common right may diſtraine for the rent behinde, though that ſuch gift was made without deede, becauſe that ſuch rent is rent ſeruice: But in ſuch caſe where a man vpon ſuch a gift, or leaſe, will reſerue to him rent ſeruice, it behoueth that the reuerſion of the Lands & tenements be in the donor, or in the leſſor: for if a man will make a feoffement in fee, or will giue Lands in the taple, the remainder ouer in fee ſimple, without a deede, reſeruing to him certaine rent, ſuch reſeruing is void, becauſe that no reuerſion is in the Donor, and ſuch a tenant holdeth his land immediatly of the Lord of whom his donor held. And this is by force of the ſtatute of Weſtminſter the 3. cap. 1. Quia emptores terrarum, For before the ſame eſtatute, if one made a feoffement in fee ſimple, by deed, or without deed, yeelding to him, or to his heires certaine rent, this was rent ſeruice, and for this he might diſtraine of common right: And if he made no reſeruation of any rent, nor of any ſeruice, yet the feoffee held of the feoffor by ſuch ſeruice, as the feoffor held ouer of his Lord next aboue. But if a man by deed indented at this day, make ſuch a gift in the taile, the remainder ouer in fee &c. or feoffement in fee, and by the ſame Inden-

dentures reſerueth to him and to his heires a certaine rent, and that if the rent bee behind, that it ſhal be lawfull to him and to his heires to diſtraine &c. ſuch rent is rent charge, becauſe ſuch lands and tenements be charged of ſuch diſtreſſe by force of the writing onely, and not of common right. And if ſuch a man in ſuch a deed indented, reſerue to him and to his heires certaine rent, without any ſuch clauſe ſet or put in the deed, that he may diſtraine &c. then ſuch rent is rent ſecke, becauſe that hee cannot diſtraine to haue the rent if it be denied by the ſame diſtreſſe, and if he were neuer ſeiſed in this caſe of the rent, he is without remedie, as it ſhalbe ſaid hereafter.

Alſo if a man ſeiſed of certaine land, graunt by his deed Poll, or by Indẽture, a perely rent iſſuing out of the ſame Land to an other in fee ſimple, or in fee taple, or for terme of life &c. with clauſe of diſtreſſe &c. then that is rent charge, and if it be without clauſe of diſtreſſe, then it is rent ſecke. And note well, that rent ſecke, idem eſt quod redditus ſiccus, becauſe that no diſtreſſe is incident to it.

Alſo if a man grant by his deed rent charge to an other, & the rent is behind, the graunteé may chuſe if hee will ſue a writ of annuitie of it againſt the grantor, or diſtraine for the rent behind, and the diſtreſſe to withhold till he bee of that paied: But he may not doe & haue both together, for if he take a writ of annuitie, then the land is diſcharged, and if he ſue not a writ

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of annuity, but distraine for the arrerages, and the tenant sueth a Replegiare, &c. and the grantee auoweth the taking of the distresse in the Land &c. in Court of Record, then is the land charged and the person of the grantor discharged of an action of Annuity.

Also, if a man will that another shall haue a rent charge issuing out of his Lands, but hee will not that his person shall be charged in any manner by a Writ of Annuity, then he may haue such clause in the end of his deed, Prouiso semper quod prẽsens scriptum nec aliquid in eo specificatum, non aliqualiter se extendat ad onerandum personam meam per breue de Annuali redditu, Sed tantummodo ad onerandum terrã & tenementa prædicta, de annuali redditu prędict', and then is the land charged, and the person of the grantor discharged.

Also, if a man make such a deed in such manner, that if I. of B. be not yerely payd at the Feast of Christmasse for terme of life, xx. s. of lawfull mony, that then it shalbe lawfull to the said I. of B. to distraine for it in the manor of F. &c. this is a good rent charge, because that the manor is charged of the rent by way of distresse: and yet the person himselfe that made such a deed is discharged in this case of an action of annuity, because that he graunted not by his deed any annuity to the said I. of B. but grãted only ꝑ he may distraine for his annuity.

Also, if a man haue a rent charge to him and to his heires issuing out of certain Land,

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if he purchase any parcell of the Land to him and to his heires, all the rent is extinct and annulled, because that rent charge may not in such maner be apportioned: but if a man that hath rent service purchase parcell of the Land whereof the rent is, this shall not extinct all but for the portion, for that rent service in such case may bee apportioned, and shall bee apportioned after the value of the Land: But if a Tenant hold his Land by service to yeld to his Lord yearely at such a feast an Horse, or an Hauke, or such thing semblable, if in such case the Lord purchase parcell of the land, the service is gone, because that such service may not be severed nor apportioned. But if a man hold his Land of another by Homage, fealty, and escuage, and by certaine rent, if the Lord purchase parcell of the Land &c. in that the rent shall be apportioned, as is aforesaid, but yet in this case the homage and fealty abideth whole to the Lord, for the Lord shall haue the homage and fealty of his Tenant for the remnant of Lands and tenements holden of him as hee had before &c. for this that such services be no annuall services, and may not be apportioned: But the Escuage may and shall bee apportioned after the quantity and rate of the land.

Also if a man haue a rent charge, and his father purchaseth parcell of the tenemets charged in the fee, and dyeth, and that parcell descendeth to his son that hath the rent charge, now this

this rent charge shall be apportioned after the value of the Lord, as is aforesaid of rent service, because that such a portion of the Land purchased by the father, commeth not to the sonne by his owne deed, but by discent and course of the Law.

Also if there be Lord and Tenant, and the tenant holdeth of his Lord by fealty and certaine rent, and the Lord graunteth the rent by his deed to another, &c. reserving to him the fealty, and the tenant attourneth to the grantee of the rent, now such rent is rent secke to the grantee, for this that the tenements be not holden of the grauntee of the rent, but bee holden of the Lord that reserued to him fealtie. And in the same maner it is where a man holdeth his Land by homage, fealtie, and certaine rent, if the Lord grant the rent, saving to him the homage, such rent after such grant is rent secke. But where Lands or Tenements bin holden by homage, fealty, and certaine rent, if the Lord will graunt the homage of his Land by his deed to another, saving to him the remnant of the seruices, and the tenant attourneth to him after the forme of the graunt, now in this case the Tenaunt holdeth his land of the grantee: and the Lord that graunteth the homage, shal not haue but the rent as rent secke, and shall neuer distraine for the rent: for this, that neither homage, nor fealtie, nor escuage, may bee said secke, for hee that hath or ought to haue of his tenant homage, or fealtie, or

escuage,

escuage, may of common right distraine for it if it be behind, for homage, fealty, and escuage beene seruices by which lands and tenements be holden, and been such ẏ in no maner may be taken but as seruices. But otherwise it is of rent that was once rent seruice, for this that when it is seuered &c. by the grant of the Lord from the other seruices, it may not be said rent seruice, for this that it hath not to it fealty which is incident to euery manner of rent seruice, and for this it is said rent secke.

Also if a man let Land to another for terme of life, reseruing to him certaine rent, if hee graunt the rent to another, sauing to him the reuersion of the Land so letten by his deed &c. such rent is but rent secke, for this that the grauntee hath nothing in the reuersion of the land. But if he grant the reuersion of the land to another for terme of life, and the tenant attourneth &c. then hath the grauntee the rent as rent seruice, because hee hath the reuersion for terme of life. And so it is to be vnderstood that if a man giue Lands or Tenements in the tayle, reseruing to him and to his heires certaine rent, or let land for terme of life, reseruing certaine rent, if he graunt the reuersion to another, and the tenant attourneth, all the rent and seruice passeth by the word of the graunt of reuersion, for this that all the rent and seruice in such case be incidents to the reuersion, and passe by the grant of reuersion. But though hee graunt the rent to another, the

the reuerſion paſſeth not by ſuch grant &c. And ſo note well the diuerſity. And ſo is holden Paſchæ 12.E.4.f.3. But it is adiudged An.26. Lib.Aſſ.pl.38.39. whereas the ſeruices of the tenant in tayle were graunted, that that was a good grant, yet notwithſtanding the reuerſion remaiens.

Alſo if there be Lord, meſne, and Tenant, and the Tenaunt holdeth of the meſne by the rent of fiue ſhillings, and the meſne holdeth ouer by xij. pence, if the Lord aboue purchaſe the tenancy in fee, then the ſeruice of the meſnalty is extinct, for this, that when the Lord aboue hath the tenancy, he holdeth of the Lord next aboue him. And if hee ought to hold it of him that was meſne, then hee ſhould hold one ſelfe tenaunty immediately of diuers Lords, which ſhould be inconuenient, and the Lawe will ſooner ſuffer a miſchiefe then an inconuenience, and for this the ſeigniory of the meſnalty is extinct. But inſomuch that the Tenaunt held of the meſne by fiue ſhillings, and the meſne held but by xij. pence, ſo that hee had more aduantage by 4. ſhillings, then hee payed to his Lord, he ſhall haue the ſaid foure ſhillings as rent ſecke yearely of the Lord that purchaſed the tenancy.

Alſo, if a man that hath Rent ſecke, is once ſeiſed of any parcell of the rent, and after if the Tenaunt will not pay the rent that is behinde, this is his remedy: It behoueth him to goe by himſelfe, or by another,

to

to the lands and tenements, whereof the rent is issuing, and there to demaund the arrerages of the rent. And if the tenant denie to pay it, this denying is a disseisin of the rent. Also, if the tenant at the time be not ready to pay it, this is a denying and a disseisin. Also if the Tenant, nor none other be dwelling vpon the lands or tenements when he asketh the arrerages &c. this is a denying in Law, and a disseisin in deede: and of such disseisins hee may haue an action of Nouel disseisin against the tenant, & recouer the seisin of the rent, and the arrerages, and his damages and costes of his writ, and of his plea &c. And if after such recouery the rent be another time denied him, then he shall haue a Rediſſeisin, and recouer double damages.

And it is to be had in mind, that this name Assise, is Equiuocum, for sometime it is taken for a Iurie, for in the beginning of the record of Assise of Nouel disseisin, the record shall begin thus, (Assisa venit recogn') which is to say, that Iuratores ven' recogn', and the cause is for this, that by the writ of Assise is commanded to the Sherife, Quod faciat xij. liberos & legales homines de vicineto &c. videre ten'tum illud, & nomina eorum imbreuiare, & quod summon' eos per bonos summon' quod sint coram Iustitiarijs &c. parat' inde facere recognitionem &c. And for this, that by force of such an originall writ, a Panell by force of the same writ ought to be retourned &c. it is

said

ſaid in the beginning of the Record in Aſſiſe, Aſſiſa venit recogn' &c. Alſo in a writ of right it is commonly ſaid, that the Tenant may put him in God and in the great Aſſiſe &c. Alſo there is a writ in the Regiſter called De magna Aſſiſa eligenda: ſo is this a good proofe that this name Aſſiſe is ſometime put for the Jurie, and ſometime it is taken for all the writ of Aſſiſe, and after that intent it is moſt properly and moſt commonly taken, as Aſſiſe of Nouel diſſeiſin, is taken for all the writ of Aſſiſe of Nouel diſſeiſin: In the ſame manner Aſſiſe of common of paſture, is taken for all the writ of aſſiſe of common of paſture, and aſſiſe of Mortdaunceſter, & Aſſiſe of Darraine preſentment &c. But it ſéemeth that the cauſe why ſuch writs at the beginning were called Aſſiſes, is for this, that by euery ſuch it is commanded to the Shirife, that he ſummon xij. &c. which is as much to ſay, that he ought to ſummon a Jury, &c. and ſometime Aſſiſe is taken for an ordinance, for to ſet certaine things in a certaine rule and diſpoſition, as an ordinance that is entred in the auncient eſtatutes is called Aſſiſa panis & ceruitiæ.

Alſo, if there be Lord & tenant, & the Lord graunteth the rent of his tenant by deed to an other, ſauing to him the other ſeruices, and the tenant attourneth, that is a rent ſecke, as it is afore ſaid: But if the rent bee denyed him at the next day of payment, her hath no remedie, for this that he had not thereof any poſſeſſion:

But

But if the Tenant when he attourneth to the grauntée, or after, will giue a penie, or a halfe penie to the grauntée in name of seisin of rent, then if after at the next day of paymẽt the rent be denied him, he shall haue an Assise of Nouel disseisin. And so it is, if a man graunt by his deed a yerely rent issuing out of his land to an other &c. if the graunto3 then after pay to the grantée a penie, or an halfe peny, in the name of seisin of the rent, then if after the first day of payment the rent be denied, the grauntée may haue an Assise, or else not.

Also of rent secke a man may haue an Assise of Mortdaunceſter, or a writ of Aiel, or Cosnage, & all other maner of actions reals, as the case lyeth, as he may haue of any other rent.

Also there be three causes of disseisin of rent seruice, that is to say, Rescous, Repleuin, and Enclosure. Rescous is, when the Lord distraineth in the land holdẽ of him for his rent behind, if the distresse be rescued from him, or the Lord come vpon the land, and would distrain, and the tenant, or another man will not suffer him &c. Repleuin is, when the Lord hath distrained, and Repleuin is made of the distres, by writ, or by plaint &c. Enclosure is, if the lands and tenements be so enclosed, that the Lord may not come within the lands and tenements for to distrain. And the cause why such things so done bee disseisins made to the Lord, is for this, that by such things ỹ Lord is disturbed of ỹ meane by which hee ought to

haue come to his rent. And foure causes be of disseisin of rent charge: that is to say, Rescous, Repleuin, Enclosure, and Denier, for denying is a disseisin of rent charge, as it is aforesayd of rent secke. And two causes be of disseisin of rent secke: that is to say, Enclosure, & Denier. And yet it seemeth that there is another cause of disseisin of all the three rents aforesaid, that is, when the Lord is going to the land holden of him for to distraine for the rent being behinde, the Tenant hearing this, encountreth him, and forestalleth him the way with force and armes, and menaceth him in such forme, that he dare not come to the Land to distraine for his rent behinde &c. for doubt of death, or bodily hurt, this is a disseisin, for this, that the Lord is disturbed of the meane whereby he ought to come to his rent. And so it is if by such forestalling and menacing, hee that hath rent charge, or rent secke is forestalled, or dare not come to the land to take the rent behind.

The third Booke.

Parceners.

PArceners be in two manners: that is to say, Parceners after the course of the Common Lawe, and Parceners after the custome. Parceners after the course of the Common Lawe, bee where a man or woman is seised of certain lands or tenements in fee simple, or fee taile, and hath none issue but daugh-

daughters and dyeth, & the tenements descend to the daughters, and the daughters enter into the lands & tenements so to them descēded, then they be called Parceners, and be but one heire to their auncestor, and they be called parceners, for this, that by the writ that is called Breue de participatione facienda, the law will constraine them that participation shall bee made among them, & if there bee ij. daughters to whom the land descendeth, then they be called two parceners, and if they be 3. daughters, they bee called 3. parceners, and 4. daughters 4. parceners, and so forth. And if a man seised of lands in fée simple, or fée taile, die without issue of his body, & the tenements descēd to his sisters, they be parceners as is aforesaid. In the same manner it is, where he hath no sisters but the land descendeth to his Aunts, they bee parceners. But if a man hath but one daughter, she may not be said parcener, but daughter and heire. And it is to wit, that partition betweene parceners may be made in diuers maners: One is when they agree to make partition, & make partition of the tenements, as if there be 2. parceners, to diuide betweēn thē the tenement in 2. parts, euery part by himselfe in seuerality of euen value, & if there be 3. parceners, to diuide the tenements in 3. parts in seuerality. And other partition there is to chuse by agreement betweēn them, certaine of their friends to make the partition betweene thē of the lands & tenements in the forme aforesaid.

And in ſuch caſes after ſuch partitions the eldeſt daughter ſhall chuſe firſt one of the parts ſo diuided, which ſhee will haue for her part. And then the ſecond daughter after her an other part, &c. if it ſo be that there be many Sifters: if it be not that they be otherwiſe agréed betweéne them, for it may be agréed betweéne them, that one of them ſhall haue ſuch Tenements, and another ſuch tenements &c. without any ſuch firſt election, and the part that the elder Sifter hath, is called in Latine Enitia pars. But if the Parceners agréé that the elder ſiſter ſhal make partition of the tenements in the forme aforeſaid, and if ſhee do, then it is ſaid that the elder ſiſter ſhall chooſe the laſt part after each of her other ſiſters. In other partition and allotting there is: as if there be 4. Parceners, and after ſuch partition made of the lands, euery part of the land is by it ſelf written in a little ſcrowle, & it is couered all in waxe, in manner of a little ball, ſo that no man may ſée the ſcrowle, then are the foure balls of waxe put in a Bonet to keépe in the hands of an indifferent man, and then the elder daughter firſt ſhall put her hand in the bonet, which ſhall take a ball of waxe, & the ſcrowle within the ſame ball for her purpartie. And then the ſecond ſiſter ſhall put her hand in the Bonet, and ſhall take another. And ſo then the third Sifter, the third ball &c. And in this caſe it behoueth each of them to hold them to their chance and allotment.

Alſo

Alſo an other partition there is, as if there be foure Parceners, and they will not agree that partition ſhalbe made betweene them, then one of thē may haue a writ de Participatione facienda againſt the other three ſiſters, or two may haue a writ of Participatione facienda againſt the other, or they three againſt ẏ fourth, at their election, and when iudgement ſhall be giuen vpon ſuch a writ, the iudgement ſhall be ſuch, that partition ſhall be made betweene the parties, and the Sherife in his proper perſon ſhall go to the Lands and Tenements &c. and there he by the oath of xij. true mē of his bayliwike &c. ſhall make partition betweene the parties, the one part of the ſame lands ſhalbe aſſigned to the plaintife, or to one of the plaintifes, and another part to another &c. not making mention in the iudgement of the eldeſt ſiſter more then of the yongeſt, and of the partitiō that he hath thus done, he ſhall make notice to the Iuſtices, &c. vnder his ſeale, & the Seales of the xij. &c. And ſo in this caſe may you ſee, that the elder ſiſter ſhall not haue the firſt election &c. But the Shirife ſhall aſſigne the part that thee ſhall haue &c. and it may bee that the Shirife will aſſigne the firſt part to the yonger ſiſter, & the laſt part to the elder.

And note well, partition by agreement betweene Parceners may by the Law be made among them, as well by word without deede, as by deede.

Alſo, if two meaſes deſcend to two Par-

ceners, and the one meafe is worth by yeare xx.s. and the other but x.s. by yeare, in this cafe partition may be made betweene them in fuch forme, that the one parcener fhall haue the one meafe, and the other Parcener fhall haue the other meafe, and fhee that fhall haue the meafe of xx.s. and her heires fhall pay a yerely rent of v.s. iffuing out of the fame meafe to the other Parcener, and to her heires for euer, becaufe that euery of them fhall haue euen in value, & fuch partition made, is good enough, and the fame Parcener that fhall haue the rent of v.s. and her heires may diftraine for the rent of commō right in the fame meafe of the value of xx.s. if the rent of v s. be behind at any time in whofe hands foeuer the fame meafe commeth, though there was neuer writing made of it betweene them. In the fame manner it is of partition of all maner of Lands and tenements &c. where fuch rent is referued to one, or to diuers Parceners vpon fuch partition &c. but fuch rent is not rent feruice, but rent charge, of common right had and referued for egalty of the partition. And note well that none be called Parceners by the Common Law, but women or the heires of women, and which come by Lands and Tenements by defcent, for if fifters purchafe lands or Tenements, of this they be called Iointenaunts and not Parceners. Alfo if two parceners of Land in fee fimple make partition betweene them &c. And the part of the one

valueth

valueth much more then the part of the other, if they were at the time of partition of full age, that is to say, of 21 yeares, then they alway shall abide and never bee defeated: But if the Tenements whereof partition is made, bee to them in fee taile, and the part that the one hath is much better in yerely value then the part of the other, howbeit that they bee excluded during their lives to defeate the partition, yet if the parcener that hath the lesser part in value hath issue and dyeth, the issue may disagree to the partition, & enter, & occupie in common that other part that is allotted to her Aunt, & so the Aunt may enter and occupie in common the other part allotted to her Sister, as if no partition thereof had beene made &c.

Also, if two Parceners of tenements in fee take Husbands, and they and their husbands make partition betweene them, if the part of the one be lesse in yerely value then the part of the other, during the lives of the husbands the partition shall be in his force and strength: yet after the death of the husband the wife that hath ỹ lesse part may enter in her sisters part, as it is aforesayd, & defeat the partition: But if the partition so made betweene them were such, that euerie part at the time of allotment were egall of yerely value, then it may not after be defeated in such cases.

Also, if there be two parceners, & the younger of them be within the age of xxj. yeares, & partition is made betweene them, so that the

part that is allotted to the younger, is lesse in value then the part of the other: In this case the ponger during the time of her nonage, and also when she commeth to full age of xxj. peres, may enter in the poꝛtion to her sister alotted &c. and defeat the partition: But such a parcener ought to take heede when she commeth to full age, that shee ne take to her owne vse, all the pꝛofits of the tenements to her alloted, foꝛ by that she agreeth to the partition at such age, in which case the partion shall stand and abide in his foꝛce and strength &c. but peraduenture the pꝛofits of the halfe shee may take, leauing the pꝛofits of the other halfe, to her Sister, &c. It is to wit, that when it is said males and females be of full age, that shall be vnderstood of the age of 21. peares: foꝛ if any feoffement oꝛ graunt, release, confirmation, obligation, oꝛ any other writing befoꝛe any such age be made by any of them &c. oꝛ that any within such age be Baylife oꝛ Receiuer with any man &c. all serueth foꝛ nought and may be auoyded. Also a man befoꝛe such age shall not bee sworne in no Iurie, noꝛ no inquisition.

Also if tenements bee giuen to a man in the taple, which hath as much land in fee simple, and hath issue two daughters and dyeth, and the daughters make partition betweene them, so that the lands in fee simple be allotted to the younger daughter, in allowance of the Tenements tailed, allotted to the elder daughter, if after such partition the younger daughter alie-

alieneth the Land in fée ſimple to another in fée, and hath iſſue a ſonne, or a daughter, and dyeth, the iſſue may enter in the Tenements tailed, and them hold in purpartie with their Aunt, and this is for two cauſes: One is for that that the iſſue may haue no remedy of the Land alienedby the mother, for that the land was to her in fée ſimple, and inſomuch as he is one of the heires in the taple, and hath nothing recompenced of that that to him belongeth of the tenements tailed, it is reaſon that he haue his purparty of the land in taile, and namely when ſuch Partition maketh no diſcontinuance of the taple, as ſhalbe ſaid hereafter in the chapter of Diſcontinuance. But the contrary is holden M. 20. H. 6. fol. 13. that is to ſay, that he may not enter vpon the parcener that hath the land tailed, but is put to his ſute by writ of Formedon. An other cauſe is, for that it ſhall be counted the folly of the elder ſiſter, that ſhee would agrée to the partition, where ſhee might haue had haife the land in fée ſimple, and haife the tenements in the taple for purparty, and ſo to be ſure without damage &c.

Alſo if a man ſeiſed in a plough land by iuſt title, diſſeiſeth an infant within age of another plough land, & hath iſſue two daughters, and dieth ſeiſed of both thoſe plough lands, the Infant then being within age, and the daughters enter & make partition, & the one plough land is allotted for the purparty of the one, as percaſe to ỹ yonger ſiſter in alloẅãce of the other

plough

plough land which is allotted to the purparty of the other, so that after the Infant entreth in the plough land of the which he was disseised, vpon the possession of the parcener that hath the same plough land, then the same parcener may enter into the other plough land that her sister hath, and holdeth in parcenary with her: But if the ponger sister alien the same plough land to another in fee simple before the entrie of the Infant, and after the childe entreth vpon the possession of the alienée, then shee may not enter into the other plough land, for this that by her alienation shee hath vtterly dismissed her selfe to haue any part of the tenements as parcener: But if the younger Sister before the entrie of the Infant make thereof a Lease for terme of yeares, or for terme of life, or in fee taple, sauing the reuersion to her, and after the childe entreth, there peraduenture it is otherwise, for this, that shee dismissed not her selfe of all that, that was in her, but hath reserued to her the reuersion and the fee simple &c.

Also, if there be three or foure Parceners that make partition between them, if the part of the one parcener be defeated by such lawfull entrie, shee may enter and occupie the other Lands of all the other parceners, and compell them to make new partitiõ of the other lands betweene them &c.

Also, if there be two Parceners, and the one taketh a Husband, and the Husband and the

the wife haue iſſue betweēn them, and the wife dieth, and the huſband holdeth him in the halfe as tenant by the curteſie: In this caſe the parcener that ſuruiueth, and the Tenant by the curteſie may well make partition betweēn thē &c. And if the tenant by curteſie will not agrée to make partition, then the parcener that ſuruiueth may haue a writ de Participatione facienda &c. and compel him to make partition. But if the tenāt by the curteſie will haue partition betweēn them, & the parcener that ſuruiueth will not haue it, then the tenaunt by the curteſie ſhall haue no remedy for to haue partition: for he may not haue a writ de Participatione facienda, for this that he is not parcener, for ſuch a writ lyeth for Parceners onely. And ſo may ye ſee that the writ de Participatione facienda lieth againſt tenant by the curteſie, and yet himſelfe may not haue ſuch a writ.

Parceners by the Cuſtome.

PArceners by the Cuſtome be where a man ſeiſed in fee or fee taile of lāds or tenemēts that be of the tenure called Gauelkind within the Shire of Kent, & hath iſſue diuers ſonnes and dyeth, ſuch Lands and Tenements ſhall deſcend to all the Sonnes by the cuſtome, and they euenly ſhall inherite and make partition betweene them by the cuſtome as females doe, and a writ de Participatione facienda lyeth in this caſe as betweene females, but it

it behoueth in the declaration to make mention of the custome. Also such custome is in other places in England. And also such custome is in Nozth Wales.

Also there is another Partition that is of another nature, and in an other fozme then any of the partitions afozesaid: As a man seised of certaine Lands in fee simple hath issue two daughters, and the elder is married, and the father giueth parcell of the same lands to the husband with his daughter in franke mariage, and dyeth seised of the remnant, the which remnant is of moze greater value by peare then be the Lands giuen in franke marriage, in this case the Husband and the wife shall haue nothing foz their part of the said remnant, but if they will put in their Lands giuen in franke mariage in hotchpot with the remnant of the Land with her Sister, and if they will not doe so, then the younger Sister may occupie the same remnant, and take to her the pzofites onely. And it seemeth that this wozde Hotchpot is in English a pudding, foz in such a pudding is commonly put not one onely thing, but one thing with an other, and foz this it behoueth in such case to put the Lands giuen in Franke marriage with the other Lands in Hotchpot, if the husband and the wife will haue any thing in the other remnant &c. This wozd Hotchpot is but a terme of similitude, and is as much to say, as to put Lands giuen in Frank marriage,

age, and other lands in fée ſimple &c. together, and this is to ſuch intent to accompt the value of all the lands, that is to ſay, of the lands giuen in frankemarige, and the remnant that was not giuen, and then partition ſhall bee made in this forme that enſueth. As put caſe that a man is ſeiſed of xxx. acres of Land in fée ſimple, euery acre in value xij. pence by the yeare, which hath iſſue two daughters, and the one is couert baron, and the father giueth x. acres of the xxx. acres to the huſband with his daughter in frankmarriage and dyeth ſeiſed of the remnant, then the other ſiſter ſhall enter into the remnant, that is to ſay, in the xx. acres, and ſhall occupie it to her owne vſe, except the Huſband and the Wife will put their x. acres giuen to them in frankmariage with the other xx. acres in Hotchpot, that is to ſay, together, and then when the value is knowne of euery acre, that is to ſay, euery acre is yerely worth xij. d. then the partition ſhall be made in ſuch forme, that is to ſay, that the huſband & the Wife ſhall haue aboue the x. acres giuen to them in frankmariage v. acres in ſeuerality of the xx. acres, and the other ſiſter ſhall haue the remnant, that is, xv. acres of the xx. acres for her part, ſo that accompting the x. acres that the Huſband and the Wife had in franke marriage, and the other fiue acres of the xx. acres, the Huſband and the Wife haue aſmuch in yearely value as the other ſiſter hath, and ſo alwaies vpon ſuch partition the Lands giuen

giuen in frankmariage, abide to the donees, or to the heires &c. after the forme of the gift &c. For if the other partner should haue any thing of this that is giuen in frankmarriage, of this should follow an inconuenience, and a thing against reason, which the Law will not suffer &c. and the cause why that Lands giuen in frankmariage shall be put in hotchpot is this, that when a man giueth lands & tenements in frankmariage with his daughter, or with his other cosin, it is to be vnderstood by the Law, that such gift made by such words frankmariage is an aduauncement of his daughter, or of his cosin, and namely when the donor, and his heires shall not haue any rent or seruice of him, except fealtie vntill the fourth degree be passed &c.

And for such cause the Law is that she shall haue nothing of the other lands & tenements descended to the other parceners &c. if she will not put the tenements giuen in frankmariage in Hotchpot, as is aforesayd, and if she will not put the Lands giuen in frankmariage in Hotchpot, then she shall haue nothing in the remnant, for this that it shall be vnderstood by the Law, that she is sufficiently aduanced, to which aduancement shee agreeth and holdeth her selfe contented.

The same Lawe is betweene the heires of the Donees in frankmarriage and the parceners &c. if the Donees in frankmarriage die before their auncesters, or before such partition

tition &c. as to put in Hotchpot &c.

And note well that gift in frankemarriage was by the Common Lawe, before the Statute of Westminster the second, and alway after so hath beene vsed and continued, and so forth.

Also such putting in hotchpot &c. is where the other lands or tenements that were not giuen in frankmariage descend from the donor in frankmariage onely, for if the Lands descend to the daughters by the father of the donor, or by the mother of the donour, or by the brother of the donour, or other auncesters, and not by the donor &c. there it is otherwise, for in such case shee to whom such gift in frankemarriage is made, shall haue her part as if no such gift in franke marriage had beene made, for this, that shee was not aduaunced by him &c. but by another.

Also, if a man seised of xxx. acres of Land, euerie acre of euen yearely value, hauing issue two daughters, as is aforesaid, and giueth of this to the husband of the daughter xv. acres in frankmariage, and dyeth seised of the other xv. acres, in this case that other sister shal haue the fifteene acres so descended to her onely, and the husbād & the wife shall not put in such case the xv. acres to him giuen in franke marriage in Hotchpot &c. for this that the Tenements giuen to him in frank marriage be of as good yeerely value as the other lands descended &c. For if the Lands giuen in franke marriage

were

were of as euen value as the remnant, or of more value, then in vaine and to none intent such Lands giuen in franke mariage shall be put in hotchpot &c. for this that she may haue nothing of the other Lands descended &c. For if she should haue any parcell of the other lãds descended, then should she haue more in perely value then her sister &c. which the Lawe will not &c. And as it is said in the cases aforesaid, of two daughters, or two parceners, in the same manner it is in like case, where there be moe Sisters, after that as the case and the matters be, &c.

And it is to wit, that lands and tenements giuen in franke mariage, shall not bee put in Hotchpot, but with the lands descended in fee simple, for of lands descended in fee taile, partition shall be made, as if no such gift in franke marriage had been made. Also no Lands shall be put in Hotchpot with other, but lands that be giuen in franke marriage only. For if any woman haue any other Lands or Tenements by any other gift in the taile, shee shall neuer put such lands so giuen in hotchpot &c. but she shall haue the part of the remnant, descended &c. that is as much as the other parcener shall haue of the same remnant.

Also an other Partition may bee made betweene Parceners, that varieth from the partitions aforesaid: As if there be three parceners, & the yongest would haue partition, and the other two would not, but will hold in parce-

na-

cenarie that that to them belongeth without partition: In this case if one part be allotted in seuerality to the yonger sister after that that shée ought to haue, then the other may hold the remnant in parcenray, and occupy in common without partition, if they will, and such partition is good enough. And if after the elder and middle parcener will make partition betweén them of that that they held, they may well doe so when they please. But where partition shalbe made by force of a writ de Participatione facienda, &c. there otherwise it is, for there it behoueth that euery parcener haue his part in seuerality, &c. More shall be said of Parceners in the Chapter of Iointenants, and also in the Chapter of Tenants in common.

Ioyntenants.

IOyntenants bée, as a man seised of certaine lands or tenements &c. and thereof hath infeoffed, two, or three, or foure, or more, to haue and to holde to them and to their heires, or to haue and to holde to them for terme of their liues, or for terme of anothers life, by force of which feoffement they be seised, such be Ioyntenants.

Also if two or three disseise another of any Lands or Tenements to their own vse, then the disseisors bee Ioyntenants: But if they disseise an other, to the vse of one of them, then bee they no Ioyntenants, but he to whom the

vse of the disseisin is made, is sole tenant, and the other haue nothing in the tenancie, but be called coadiutors to the disseisin &c.

And note well, that disseisin is properly where a man entreth into any Lands or tenements, where his entrie is not lawfull, & putteth him out that hath the franketenement &c. And it is to wit, that the nature of ioyntenancy is, that he that suruiueth shall haue only the whole tenancy, after such estate as hee hath if the iouture be continued &c. As if three ioyntenaunts be in fee simple, & the one hath issue & dyeth, yet they that suruiue shal haue the tenements whole, and the issue shall haue nothing, and if the second iointenant haue issue and die, yet the third that suruiueth shal haue the tenements whole, and shall haue them in fee simple to him and to his heires. But otherwise it is of Parceners, for if three parceners be, & before any partion the one hath issue and dyeth, that that to her belongeth shall descend to her issue, and if such a parcener die without issue, then that that to her belongeth shall descend to her coheires, so that they shal haue this by descent, and not by the suruiuor as Ioyntenants haue &c. And as the suruiuor holdeth place among Ioyntenants &c. in the same manner it holdeth place among them that haue ioynt estate or possessiō with others of chattels real, or chattels personall. As if a lease of lands or tenemēts be made to many for term of yeres, hee that suruiueth of the lessees shall haue the tene-

tenements whole to him during the terme by force of the same Lease. And if an Horse, or other chattel personall be giuen to many men, he that suruiueth shall haue them to himselfe.

In the same maner it is of debts & duties &c. For if an Obligation be made to many for one dutie, he that suruiueth shall haue all the debt, and so it is of all other couenants & contracts.

Also some iointenãts may be that may haue ioynt estates, and bée iointenants for terme of their liues, and yet they haue seuerall inheritance: As if lands be giuen to two men, & to the heires of their two bodies ingendred: In this case the donees haue ioint estate for terme of their two liues, and they haue seueral inheritance: For if the one of the donées haue issue and dye, the other that suruiueth shall haue all by the suruiuour for terme of his life. And if he that suruiueth hath also issue and dye, then the issue of the one shall haue the halfe of the land, and the issue of the other shall haue the other halfe of the Land, and they shall hold the land betweene them in common, and be not iointenants, but tenants in common. And the cause that such donees in such cases haue ioynt estate for terme of their liues, is this, for this that at the beginning Lands were giuen to them two, which wordes without more saying, made a ioint estate to them for terme of their liues. For if a man will let lãd to another by deede, or without deede, not making mention what estate he hath, and of this maketh

liuery of seisin: In this case the lesse shall haue estate for terme of his life, and so in so much that the lands were giuen to them, they haue a ioynt estate for term of their liues. And the cause why they haue seuerall inheritance is this, inſomuch that they cannot by possibility haue an heire betweene them ingendred as a man and a woman may haue &c. then the law will that their estate and their inheritance shal be such as reason will, after the forme & effect of the wordes of the gift, and that is to the heires that the one ingendreth of his body by any of his wiues, & the heires that the other ingendreth of his body by any of his wiues &c. So it behoueth by necessity of reason, that they shall haue seuerall inheritances. And in such case, if the issue of one of the donées after the death of the donées die, so that hee hath no issue aliue of his body ingendred, then the donour or his heires may enter in the halfe as in his reuersion, though the other of the donées hath issue aliue &c. And the cause is, for so much as the inheritance is seuered &c. the reuersion in the law is seuered &c. and the suruiuour of the issues of the other shall hold no place to haue the whole. And so as it is said of males, in the same manner it is where land is giuen to two females, and to the heires of their two bodies begotten.

Also if Lands be giuen to two females, and to the heires of one of them, this is a good Ioinʒure, and the one hath a freehold, and the other

other hath fée ſimple, & if ſhee that hath the fée dye, ſhée that hath the fréehold ſhall haue the whole by the ſuruiuor for terme of life. In the ſame manar it is where tenements be giuen to two, & to the heires of the body of one of them ingendred, the one hath fréehold, and the other fée taile. Alſo, if two Iointenants be ſeiled of eſtate of fée ſimple, and the one granteth a rent charge by his déed to another out of that that to him belongeth, &c. In this caſe during the life of the grantor, the rent charge is effectual. But after his deceaſe the rent charge is voyd as to charge the land, for that he that hath the land by the ſuruiuor, ſhall hold all the land diſcharged: And the cauſe is for this, that he that ſuruiueth claimeth to haue the land by the ſuruiuour &c. and not by deſcent of his fellow, &c. But otherwiſe it is of Parceners, for if there be two Parceners of tenements in fée ſimple, and before any partition the one chargeth that that to him belongeth by his déed, with a rent charge &c. and dieth without iſſue, & that that to him belongeth, deſcendeth to the other parcener, In this caſe the other Parcener ſhall hold the land charged &c. for this that he commeth to the halfe by deſcent as heire &c.

Alſo, if there be two Iointenannts in fée ſimple within a Borough where the Lands and tenements within the ſame Borough be deuiſable by Teſtament, if the one of the ſaid Iointenaunts deuiſe that, that to him belongeth by Teſtament &c. and dye, this deuiſe is

voyde. and the cause is this, that no deuise may take effect but after the death of the deuysor. And for this that by his death all the land incontinent commeth by the law to his fellow that survyueth by the survivor, which neither claimeth, nor hath any thing in the land by the deuise, but in his owne right by the survivour after the course of the Lawe &c. for this cause such deuise is voyd.

But otherwise it is of Parceners seised of tenements deuisable in such case of deuise &c. Causa qua supra.

Also it is commonly said, that every Iointenant is seised of the land that he holdeth iointly &c. throughout and by all. And this is as much to say that he is seised by every parcell, & by all &c. and this is true, for in every parcel, & by each parcell, & by all the lands & tenements he is ioyntly seised with his fellowes &c.

And if two Iointenants be seised of certain land in fée simple, and the one letteth that, that to him belongeth to a straunger for terme of xl. yeares and dyeth within the terme: In this case after his decease the lessée may enter and occupie the halfe to him letten during the terme &c. though the lessée neuer had possession of it in the life of the lessor, by force of this lease &c. And the diuersity betweene the case of the grant of a rent charge and this case is this, for in the graunt of a rent charge by a ioyntenant ꝑ tenements abide alway as they were before, without that, that any hath any right to haue

parcell

parcell of the tenements but himselfe, and the tenements abide in such plight as they were before the charge &c. But where a Lease is made by a Iointenant to an other for terme of yeres &c. incontinent by force of the Lease the lesse hath right in the same land, that is to say, of all that that to his lessor belonged, and to haue that by force of the same lease during his terme &c. and this is the diuersitie &c.

Also Iointenaunts if they will may make partition betweene them, and the partition is good enough, but they shall not be compelled by the Law to doe it, but if they will make partition of their proper will and agreement, the partition shall stand in his strength. P. 3. E 4. See Sta. 31. H. 8. cap. 21. and 32. H. 6. cap. 32.

Also, if a ioint estate be made of land to the husband and the wife, and to a third person, in this case the husband and the wife haue not in the Lawe in their right but the halfe &c. And the third person shal haue as much as the husband and the wife haue, that is to say, the other halfe &c. And the cause is, for that the husband and the wife be but one person in the law, & be in like case as if the estate be made to two iointenants, where each one hath by force of the ioinure the one halfe, and the other the other halfe. In the same maner it is, where an estate is made to the husbād and the wife, and to other two men, in this case the husband and the wife haue not but the third part, and the other two men the other two parts &c. Causa

qua supra. More shalbe said of ỹ matter touching Joyntenance, in the Chapter of Tenants in Common.

Tenants in Common.

TEnaunts in Common bee they, that haue lands and tenements in fee simple, fee taile, or for terme of life &c. which haue such Lands and tenements by seuerall title, and not ioynt title, and none of thē knoweth that that is seuerall to him. But they ought by the law to occupie such lands and tenements in common, & bndiuided to take the profits in common. And because that they come to such lands and tenements by seuerall titles, & not by one selfe ioint title, and their occupation & possession shall be by the law among them in common, therefore they be called Tenaunts in Common: as if a man infeoffe two Jointenants in fee, and one of them alieneth that that to him belongeth to another in fee, now the other Joyntenant and the alienee be tenants in common, for this that they be seised in such tenements by seuerall titles, for the alienee commeth to the halfe by the feoffement of the one ioyntenāt, & the other iointenant hath the other halfe by force of the first feoffemēt made to him and to his first fellow, and so they be in by seuerall titles, and by seuerall feoffements &c. And it is to wit, that when it is said in any Booke, that a man is seised in fee, without more saying it shall be vn-

vnderstood fée simple, for it shall not be vnderstood by such word in fée, that a man is seised in fée taile, except that there be put therto such addition, to say, fée taile.

Also if three Jointenants be, and the one of them alieneth that that to him belongeth to an other in fée: In this case the alienée is tenant in common with the other two Joyntenants. But yet the other two Jointenants be seised of the two parts ioyntly, and of those two parts the survivour betweene them holdeth place &c.

Also if there be two Joyntenants in fée, and the one giueth that that vnto him belongeth to another in the tayle, the donée and the other ioyntenant be tenaunts in common &c. But if the Lands bee giuen to two men, and to the heires of their two bodies ingendred, the donées haue ioint estate for terme of their lines, and if each of them haue issue and dye, their issues shall hold in common &c. But if Lands bee giuen to two Abbots, as to the Abbot of Westminster, and to the Abbot of Saint Albans, to haue and to hold to them and to their successours, in this case they haue incontinent at the beginning estate in common, and not ioynt estate: And the cause is for this, that euery Abbot, or other Soueraign of an house of Religon, before that he be made Abbot, or Soueraigne, was but a dead man in the law. And when he is made Abbot, he is as a man personable in the Lawe, all onely to purchase,

and

and to haue Lands and tenements, and other things to the vse of his house, & not to his own proper vse, as other secular men may. And for this in the beginning of their purchase, they be tenants in common. And if the one of them dye, the Abbot that surviueth shall not haue all by the survivor, but the successor of the Abbot that dieth shall hold the halfe in common with the Abbot that survyueth &c.

Also if lands be given to an Abbot and to a secular man, to haue and to hold to thē, that is to say, to the Abbot and his successors, and to the secular man, to him and to his heires, they haue estate in common, Causa qua supra.

Also if Lands be given to two men, to haue and to hold, the one halfe to the one and to his heires, and the other halfe to the other and to his heires, they be tenants in common &c.

Also if a man seised of certaine Lands enfeoffeth another in the halfe of the same Land, without any speech of assignement or limitation of the same halfe in severalty at the time of the feoffement, then the feoffee and the feoffor shall hold the parts of the land in cōmon. And in the same maner as is aforesaid of tenāts in common of lāds or tenements in fee simple or in fee taile, in the same manner may it be said of tenants for terme of life. As if two Joyntenants be in fee, & the one letteth to a man that, that vnto him belongeth for terme of life, & the other Jointenant letteth that, that to him belongeth to another for terme of life, these two

lessees

leſſees be Tenaunts in common for terme of their liues &c.

Also, if a man let Lands to .2. men for terme of their liues, & the one granteth all his eſtate of that that vnto him belongeth to another &c. then the other tenant for terme of life, and he to whom ꝑ grant is made be tenants in common during the time that both leſſees be aliue.

Also it is to be remembred, that in all other ſuch caſes, though that they bee not heere expreſſly named or ſpecified, if they be in like reaſon, they be in like Law.

Also if there be two Ioyntenants in fée, and the one letteth that, that vnto him belongeth to another for terme of life, the tenāt for terme of life, during his life, and the other ioyntenāt that did not let be tenants in cōmon. And vpon this caſe a queſtion may riſe, as this: Put the caſe that the leſſor hath iſſue and dyeth, lyuing the other ioyntenant his fellow, and lyuing the Tenaunt for terme life, the queſtion may be ſuch, if ꝑ reuerſion of the halfe &c. that the leſſour hath, ſhal deſcend to the iſſue of the leſſor, or that the other iointenant ſhall haue it by the ſurutiuour. And ſome haue ſaid in this caſe, that ꝑ other iointenant ſhall haue the reuerſion by the ſuruiuor, & their reaſon is ſuch, when the iointenants were iointly ſeiſed in fée ſimple &c. though the one of them made eſtate of that that vnto him belongeth for terme of life, and though that hee hath ſeuered the frankетenaunt of that that to him belongeth by

by the Leaſe, yet hee hath not ſeuered the fée ſimple, but the fée ſimple abideth to him iointly as it was before. And ſo it ſéemeth vnto them that the other Iointenant that ſuruiueth, ſhal haue the reuerſion by the ſuruiuour &c. And other haue ſaid the contrary, and this is their reaſon, when one of the Iointenants letteth this that to him belongeth to another for term of his life, that by ſuch Leaſe the Franktenement is ſeuered from the ioynture: And by the ſame reaſon the reuerſion that is dependant vpon the ſame franktenement is ſeuered from the iointure. Alſo if the Leſſor had reſerued to him a yeerely rent vpon the Leaſe, the leſſour onely ſhould haue had the rent &c. The which is a proofe that the reuerſion is onely to him, and that the other hath nothing in the reuerſion &c. And if the Tenaunt for terme of life were impleaded &c. and make default after default, then the leſſour ſhall be onely of this receiued to defend his right, and his fellowe in this caſe in no manner ſhall bee receiued: which proueth that the reuerſion of the halfe is onely in the leſſour. And ſo by conſequence if the Leſſour die, liuing the leſſée for terme of life, the reuerſion ſhall deſcend to the heires of the Leſſour &c. and not come to the other Iopntenant by the ſuruiuour, Ideo Quære. But in this caſe, if the Iopntenant that hath the Franktenement haue iſſue and die, liuing the leſſour & the leſſée, then it ſéemeth that the iſſue ſhall haue the halfe in his demeſne as of

fée

fee by deſcent, for this that the franktenement may not by nature of the ioynture bee annexed to a reuerſion. And it is certaine, that he that did not let was ſeiſed of the halfe in his demeſne as of fee, and none ſhall haue any ioinſture in his franktenement, Ergo this ſhall deſcend to his iſſue, Sed quære. But if it be thus, that the Lawe in this caſe is thus, that if the leſſor dye liuing the leſſee, and liuing the other iointenant that hath the franktenement of the other halfe, that the reuerſion ſhall deſcend to the iſſue of the leſſor, then is the ioinſture and the title that any of them may haue by the ſurmiſour by right of the ioniture, annulled and all vtterly defeated for euer.

In the ſame manner it is, if the Jointenant that hath the Franketenement dye, liuing the leſſor and the leſſee, if the lawe be ſuch that his franktenement and fee that hee hath in the halfe ſhal deſcend to his iſſue, then the ioynture ſhall be defeated for euer &c.

Alſo if three Jointenaunts be, and the one releaſeth by his deed to one of his fellowes, all the right that he hath in the land, then hath he to whom the releaſe is made, the third part of the Lands by force of the releaſe, and hee & his fellow ſhall hold the other two parts ioyntly, And as to the third part that he hath by force of the releaſe, hee holdeth the third part with himſelfe and his fellow in common.

And it is to wit, that ſometime a deede of releaſe ſhall take effect, and ſhall bee in lye to

put

put the eſtate of him that made the releaſe, to him to whom the releaſe is made, as in the caſe aforeſayd.

And alſo if a ioynt eſtate bee made to the Huſband and his wife, and to a third perſon, and the third perſon releaſeth his right that he hath &c. to the huſband, then hath the huſband the halfe that the third perſon had, and the wife of this hath nothing. And if in ſuch caſe the third releaſe &c. to the wife, not naming the huſband in the releaſe, then hath the wife the halfe that the third perſon had, and the huſband hath nothing of this, but in right of his wife, for this that in ſuch caſe the releaſe ſhall inure to put the eſtate to him to whom the releaſe is made, of all that that belongeth to him that made the releaſe. And in ſome caſe a releaſe ſhall inure to put all the right that hee hath that made the releaſe, to him to whom the releaſe is made. As if a man ſeiſed of certaine Lands and Tenements, is diſſeiſed by two diſſeiſors, if the diſſeiſee by his deed releaſe all his right &c. to one of the diſſeiſours, then hee to whom the releaſe is made, ſhall haue and hold all the Tenements to him onely, and put his fellow out of euerie occupation of it: and the cauſe is, for this, that the two diſſeiſours were ſeiſed in the Tenements by wrong of them done againſt the Law. And when one of them hath the leaſe of him that had right to enter &c. this right in ſuch caſe reſteth in him to whom the re-

releas is made, and in such plight, as if he that had the right had entred and enfeoffed him &c. And the cause is for this, that hee that before had an estate by wrong, that is to say, by disseisin, now by the releas hath a rightfull estate

And in some case a releas shall enure by way of extinguishment, and in such case such release shall help the ioint tenant to whom the release is not made, as wel as him to whom the release is made. As if a man be disseised, and the disseisor maketh a feoffemẽt to two men in fee, if the disseisee release to one of the feoffees in fee by his deed, thẽ such a releas shal inure to both the feffees, for this, that the feffee hath estate by the Lawe, that is to say, by the feoffement, and not by any wrong, done to any other.

And in the same manner it is, if the disseisor make a release to a man for terme of life, the remainder over to another in fee, if the disseisee releases to the Tenant for terme of life, all his right &c. this release enureth aswell to him in the remainder, as to the tenant for term of life &c. And the cause is for this, that ꝑ tenant for terme of life cõmeth to his estate by the course of the Law, and for this the release shal enure and take effect by way of extinguishmẽt of the right of him that hath released &c. And by this releas the tenãt for terme of life hath no greater estate then he hãd before the release made vnto him, and the right of him that released is all vterly extinct. And in so much that such re-

releale cannot inlarge the eſtate of the tenant for terme of life, it is reaſon that the releale ſhall enure to him in the remainder &c More ſhall bee ſaid of Releales, in the Chapter of Releales.

Alſo if there be two Parceners, and the one alieneth that that vnto him belongeth to an other, then the other Parcener and the alienee be Tenants in common.

Alſo Tenants in common may be by title of preſcription, if the one and his anceſtors, or they whoſe eſtate he hath in the halfe, haue holden in Common, the ſame halfe with the other tenant that hath the other halfe, & with his anceſtors, of them whoſe eſtate he hath as vndiuided, from time whereof no memory runneth. And diuers other matters may make and cauſe men to be tenants in common that be not here expreſſed.

Alſo in ſome caſe tenants in common ought to haue of their poſſeſſion ſeuerall actions, and in ſome caſes they ſhall ioin in one action. For if there be two Tenants in common, and they be diſſeiſed, they ought to haue againſt the diſſeiſers two Aſſiſes, & not one Aſſiſe, for euery of them ought to haue an Aſſiſe of his halfe &c. and the cauſe is for this, that tenants in common were ſeiſed by ſeuerall titles: But otherwiſe it is of Iointenants, for if there be twenty Iointenants, and they be diſſeiſed, they ſhal haue in all their names but one Aſſiſe, becauſe that they haue had but one ioynt title.

Alſo

Alſo if there be three Joyntenants, and one releaſeth to one of his fellowes all the right that he hath, and after the other two bee diſſeiſed of the whole &c. in this caſe the other ſhall haue ſeuerall Aſſiſes in this forme, that is to ſay, they ſhall haue in both their names one Aſſiſe of the two parts &c. for this that they held the two parts joyntly at the time of the diſſeiſin: And as to the third part, he to whom the releaſe is made, ought to haue thereof an Aſſiſe in his owne name, for this, that as to the third part he is Tenant in common &c. for this, that he came to the third part by force of the releaſe, and not onely by force of the joynture.

Alſo, as to ſue actions that touch the realty, there is diuerſity betweene parceners that be in by diuers diſcents, and tenants in common. For if a man ſeiſed of certaine lands in fee, haue iſſue two daughters and dy, and they enter &c. and each of them haue iſſue a ſonne, & dieth without partition made betweene them, by which the one halfe deſcendeth to the ſonne of the one parcener, & the other halfe deſcendeth to the ſonne of the other parcener, & they enter and occupy in common, and be diſſeiſed: in this caſe they ſhall haue in their two names one Aſſiſe, and not two Aſſiſes: and the cauſe is, that though they come in by diuers deſcents &c. yet they be Parceners, and a writ de Participatione faciēda lieth betweēn them, and they be not Parceners, hauing regard or

respect onely to the seisin and possession from their mothers, but they be parceners, having more respect to their estate that descended frō their graundfather to their mothers: For they may not be Parceners, where their mothers were not Parceners before &c. And so to such respect and consideration, that is to wit, as to the first descent, that was to their mothers, they haue a title in parcenarie, the which maketh them parceners: And also they be but as one heire to their common auncestor, that is to say, to their Graundfather, from whom the land descended to their mothers: And for these causes before partition between them &c. they should haue one Assise, though they come in by seuerall descents &c.

Also, if there be two tenants in common of certaine Lands in fee, and they giue the same Land to another man in the taile, or let it to another man for terme of life, yeelding an annuitie, or certaine rent, and a pound of Pepper, or an Hauke, or an Horse, and they been seised of their seruice, and after all the rent is behind, and they distraine for it, and the Tenant maketh rescous: In that case, as to the rent and the pound of Pepper, they shall haue two Assises: and as to the Hauke, and the Horse, but one Assise. And the cause why they haue two Assises as to the rent and pound of Pepper, is this, in so much that they were Tenants in common by seuerall titles, and when they made a gift in the tayle, or lease for terme

of

of like &c. Sauing to them the reuerſion, and yeelding to them certain rent &c. Such reſeruation is incident to their reuerſion. And for this that their reuerſion is in common, and by ſeuerall titles, as their poſſeſſion was before, the rent and other things that may bee ſeuered and were to them reſerued vpon the gift, or vpon the Leaſe, which be incident by the Lawe to the reuerſion, ſuch things ſo ſeuered were of the nature of the reuerſion, which reuerſion is to them in common by ſeuerall titles.

And it behooueth that the rent of the pound of Pepper which may be ſeuered bee to them in common by ſeuerall titles. And of this they ſhall haue two Aſſiſes, and euery of them in his Aſſiſe ſhall make his plaint of the halfe of the rent, and of the halfe of the pound of Pepper &c.

But of the Hauke & the Horſe which cannot bee ſeuered, they ſhall haue but one Aſſiſe, for a man may not make a plaint in Aſſiſe of the halfe of an Hauke, or the halfe of an Horſe &c. In the ſame maner it is of other rents and ſeruices y tenaunts in common haue in groſſe by diuers titles.

Alſo, as to Actions perſonals, Tenants in common ought to haue ſuch actions perſonals ioyntly in all their names, that is to ſay, of Treſpaſſe, or of offences that touch their Tenements in common: as of breaking of their houſes, breaking of their cloſes and

pastures, wasting & defouling of their grasse, cutting of their wood, & to fish in their ponds, and such other: In this case tenants in common shall haue one action iointly, and recouer ioynt paunmages, because that the action is in the personalty, and not in the realty.

Also, if two Tenants in common make a lease of their two Tenements to an other for terme of yeares, yeelding vnto them yearely a certaine rent, if the rent be behind &c. the Tenants shall haue one action of Debt against the lesse, and not diuers actions, for that the action is in the personalty.

Also tenants in common may make partition betweene them, if they will, though they shall not bee compelled by the Lawe. But if they make partition betweene them by their agreement and assent, such partition is good enough, as it is abiudged in the booke of Assises P. 3. E. 4.

Also as there be tenants in comon of lands or tenements &c. as is aforesaid: In the same maner there be tenats in common of chatteis reall, and chatteis personall. As if a Lease be made of certaine lands to two men for terme of xx. yeares, & when they be thereof possessed the one of the lessées granteth that that vnto him belongeth during the terme to another, then he to whome the grant is made, and the other shall hold and occupy in common.

Also, if two Iointenants haue the ward of the body and of the Lands of a childe within

age,

age, and the one of them graunteth to an other that that vnto him belongeth of the same ward, then the grantee & the other that graunteth not, shall haue and hold it in common &c.

In the same manner it is of chattels personals: As if two haue a ioynt estate by gift or by buying of an Horse, or an Oxe &c. the one of them graunteth that that to him belongeth of the same Horse, or Oxe &c. Then the grauntee and he that graunteth not, shall haue & possesse such chattell personall in common &c. And in such cases where diuers persons haue chattels reals or personals in common, and by diuers titles, and one of them die, the other that suruiueth, shall not haue that by the suruiuor. But the executors of him that dyeth shall hold and occupie that with him that suruiueth, as their testatour did or ought in his like &c. for this that their titles and right in this case were seuerall.

Also, in this case aforesayd, if two haue estate in common for terme of peres, & the one occupie all and put the other out of his possession and occupation: Then shall he that is put out of occupation, haue against the other a writ de Ejectione firmæ for the halfe against the other. In the same maner it is where two hold the ward of Lands or Tenements during the nonage of a child, if one put out the other of his possession, he that is out shall haue a writ of Ejectment de garde of the halfe, for this that those things be Chattels reals,

and may be apportioned and seuered &c. But no such action of trespas, that is to say, Quare clausum suum fregit, & herbam suam conculcauit & consumpsit, &c and such like actions the one may not haue against the other, for this that each of them may enter and occupie in common &c. throughout and by all the tenements which they hold in common. But if two be possessed of chatteis personals in common by diuers titles, as of an horse, or an oxe, or a cow, if the one take it all to himselfe out of the possession of the other, the other hath none other remedy but to take this of him that hath done to him the wrong for to occupy in common when he may see his time.

In the same manner it is of Chattels reall that may not be seuered, as in the case aforesaid. Two bee possessioners of a ward of the body of a child within age, if one take the childe out of the possession of the other, the other hath no remedy by any action by the Law, but to take the child out of the others possession when hee seeth his time &c.

Also, when a man in pleading will shewe a deed of Feoffement made vnto him, or a gift in the taile, or a lease for term of life of any lands or Tenements, there hee shall say by force of which feoffement, gift, or lease, he was seised &c. But where a man will plead a Lease or grant made vnto him of a chattell reall or personall, there he shall say by force of which hee was possessed.

More

More ſhall be ſaid of Tenants in common in the Chapter of releaſes, and Confirmations.

Eſtates vpon Condition.

ESTates ỹ men haue in lands or tenements vpon condition, be in 2. maners: ỹ is to ſay, they haue eſtate vpon condition in deed, or vpon condition in law. Vpon condition indeed, is as a man by deed indented infeoffeth an other in fee, reſeruing to him and to his heires yerely a certain rent, payable at one feaſt, or at diuers feaſts by the yere, vpon condition, that if the rent be behind &c. that it ſhall be lawfull to the Feoffor and to his heires to enter into the Lands or Tenements &c. Or if the Land be aliened to another in fee, to yeld vnto him certaine rent &c. And if it hap that the rent be behind by a weeke after any day of paiment of it, or by a Moneth, or by a halfe yeare after any day of paiment, that then it ſhalbe lawfull to the feoffor and to his heires to enter &c. In this caſe, if the rent be not payed at ſuch a day, or before ſuch a time limited & ſpecified within the Condition comprized in the Indenture, then may the Feoffour or his heires enter into ſuch Lands or Tenements, and them in his firſt eſtate to haue and to hold, and of this to put the Feoffee cleane out: And it is called Eſtate vpon condition, for this, that the

eſtate of the feoffee is defeaſible, if the condition be not perfourmed.

In the ſame maner it is if Lands be giuen in the taple, or let for terme of life, or for terme of yeares, vpon ſuch condition &c. But where a feoffement is made of certaine Lands, reſeruing certaine rent vpon ſuch condition, that if the rent be behind, that it ſhall be lawful to the feoffor and his heires to enter, and the land to hold till they be ſatisfied or payed of their rent behind &c. In this caſe if the rent be behinde and the feoffor and his heires enter, the feoffee is not excluded cleane out, but the feoffor ſhall haue and hold the Land, and take the profits till that he be ſatisfied of the rent behinde &c. And when he is ſatisfied, the feoffee may reenter in the ſame Land, and hold it as he did before, for in ſuch caſe the feoffor ſhall haue it but in maner for a diſtreſſe, in the meane time till he be ſatisfied of the rent &c. though he take the profits in the meane time.

Alſo, diuers words among other there bee, that by vertue of themſelfe make eſtate vpon condition: One is, this word of Condition, as A. enfeoffed B. of certaine Land, to haue and to hold to the ſame B. and to his heires vpon Condition, that the ſame B. and his heires ſhall pay, or doe to be payed to the foreſaid A. and to his heires yeerly ſuch rent &c. In theſe caſes without any more ſaying the feoffee hath eſtate vpon condition. Alſo if the Condition were ſuch, Prouided alway, that

the

the aforeſaid B. pay, or doe to be payed to the aforeſaid A. ſuch rent: or if they were thus, ſo that the foreſaid B. pay, or doe to be payed ſuch rent: In theſe caſes without any more ſaying, the feoffée hath eſtate but vpon condition, ſo that if hee performe not the condition, the feoffor and his heires may enter &c.

Alſo, other wordes there be in a deed that cauſeth the Tenements to be conditionall, as vpon ſuch a Feoffement a rent is reſerued to the Feoffor &c. and after it is put in the deed, that if it chaunce the aforeſaid rent to bee behinde in part or in all &c. that then it ſhall be lawfull to the feoffor and to his heires to enter, and this is a deede vpon condition. But there is diuerſity betweene the words (if it chaunce &c.) and the wordes next aforeſaid, for this word (if it chaunce &c.) is nought worth to ſuch condition, but if it hath theſe wordes following, that is to ſay, that it ſhall be lawfull to the Feoffor and to his heires to enter &c. But in theſe caſes aforeſaid, it néedeth not by the law to put ſuch clauſe, that is to ſay, that the Feoffor and his heires may enter &c. for this, that they may ſo doe by force of the wordes aforeſaid, becauſe they containe in themſelues in the Law a Condition, that is to ſay, That the feoffor and his heires may enter. Yet it is common in all ſuch caſes aforeſaid, to put ſuch clauſes in the déedes, that is to ſay, if the rent be behinde &c. that it ſhall be lawfull to the ſame Feoffour and his

heires

heires to enter &c. And this is well done to that intent for to declare and expres to the lay men that be not learned in the Law, the manner and the condition of the feoffement &c. As a man ſeiſed of land as of franktenement, lets the ſame land to an other by deed indented for terme of yeares, yeelding vnto him certaine rent, it is vſed to bee put in the deed, that if the rent be behinde at the day of paiment, by a Moneth &c. that then it ſhall bee lawfull to the leſſor to diſtraine &c. and yet the leſſor may diſtraine of common right for the rent behinde &c. though ſuch words neuer were ſet in the deed &c.

Alſo, if a feoffement be made vpon ſuch condition, that if the Feoffour pay at a certaine day &c. twenty pounds of money, that then the Feoffour may enter &c. In this caſe the feoffée is called Tenant in Mortgage, that is as much to ſay in French, as Mortgage, and in Latine Mortuum vadium, and in Engliſh, a dead pledge. And it ſéemeth that the cauſe why it is called Mortgage, is that it ſtandeth in doubt if the feoffor will pay at the day limited, ſuch a ſumme or not: And if he pay not, then the Land that is put in pledge vpon condition for the payment of the Money, is gone from him for euer, and ſo dead as to the Tenant, &c.

Alſo, as a man may make a Feoffement in fée in Mortgage, ſo may a man make a gift in the tayle in Mortgage, and a leaſe for terme

of

of life, or for terme of yeares in Mortgage. And all ſuch Tenants be tenaunts in Mortgage after the ſtate that they haue in the Lands &c.

Alſo, if a Feoffement bee made in Mortgage, vpon condition that the Feffour ſhall pay ſuch a ſumme at ſuch a day &c. as is betweene them by their deede indented accorded and limitted, though the Feffour dye before the day of payment &c. yet if the heire of the feoffour pay the ſumme within the day to the Feoffee, or proffer him the money, and the feoffee refuſeth to receiue it, thē may the heire enter into the Lands. And yet the condition is, if the Feoffor pay ſuch a Summe ſuch a day &c. and not making mention in the condition of any payment to be made by his heire, but for this that the heire hath intereſt of right in the condition, &c. And the intent was but that the money ſhould bee payed at ſuch a day ſet &c. and the feoffee hath no more damage to be payed by the heire, then though he were payed by the father &c. for this cauſe if the heire pay the money, or tenders the money at the day ſet &c. and the other refuſeth it, hee may well enter. But if a ſtraunger of his owne head that hath no intereſt &c. would tender and pay the money at the day ſet, then the Feoffee is not bound to receiue it &c.

Alſo, it is to be had in minde, that in ſuch caſe where ſuch lawfull tender of the money

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is made, and the Feoffee refuſeth to receiue it, wherefore the Feoffor or his heires doe enter &c. then the feoffee hath no remedy by the common Lawe, for this that it ſhall be counted his owne folly that he refuſed the money when lawfull proffer was made of it vnto him &c.

Alſo, if a feoffement be made with ſuch condition, that if a Feoffee pay to the Feoffor at ſuch a day betweene them limited xx. li. that then the Feoffee ſhall haue the land to him and to his heires, and if he faile to pay the money at the day &c that then it ſhall be lawfull to the Feoffor, or to his heires to enter &c. And if after, before the day ſet, the Feoffee ſelleth the Land to an other, and thereof make a Feoffement vnto him, in this caſe if the ſecond feoffee will tender the ſumme of money at the day ſet to the Feoffor, and the Feoffor refuſeth it &c. then hath the ſecond Feoffee eſtate in the land cleerely without condition: And the cauſe is, for that the ſecond Feoffee had intereſt in the condition for ſaluation of his tenancy. And in this caſe it ſeemeth, that if the firſt feoffee after ſuch ſale of Land will tender the money at the day ſet &c. to the Feoffor, that ſhall be good enough for the ſaluation of the eſtate of the ſecond feoffee: for this, that the firſt feoffee was priuie to the condition, and ſo the tender of any of them is good enough &c.

Alſo if the feffement be made vpon condition, that if the feoffor pay a certain ſumme of mony

to

to the feoffee: that then it ſhall be lawfull to the feoffor and to his heires to enter &c. In this caſe if the feoffor dy before the day of paiment, and the heire will tender to the feoffor the money, ſuch tender is voyde: for this that the time within which the tender ought to bee made, is paſt. For when the condition is, that if the feoffor pay the money to the feoffee, this is as much to ſay, that if the feoffor during his life pay the money to the feoffee &c And when the feoffor dyeth, then the time of the tender is paſt. But otherwiſe it is where day of payment is limited, and the feoffor dyeth before the day, then may the heire tender the money, as is aforeſaid, for this that the time of the tẽder was not paſt by the death of the feoffor. Alſo it ſeemeth in ſuch caſe where the feoffor dyeth before the day of payment, if the executors of the feoffor tender the money to the feoffee at the day of payment, the tender is good enough. And if the feoffee refuſe this, the heires of the feoffor may enter &c. And the cauſe is for this, that the executors repreſent the perſon of the teſtator &c,

And note well, that in all ſuch caſes of condition of payment of a certaine ſum in groſſe, touching lands or tenements, if lawful tender be once refuſed, he that ought to pay the mony is thereof quited & clerely diſcharged for ever.

Alſo, if the feoffee in mortgage before the day of payment that ſhall be made vnto him make his executors & dy, and his heire enter into the

land

Land as he ought. It seemeth in this case that the Feoffor ought to pay the money at the day set to the executors, and not to the heire of the feoffee, for this, that the mony at the beginning belonged to the Feoffee in manner as a duttie. And it shall be vnderstood, that the estate was made because of borrowing of the money of the Feoffee, or because of an other dutie, & for this the payment shall not bee made to the heire of the Feoffee, as it seemeth. But the wordes of the Condition may be such, that the payment shall be made vnto the heire, as if the condition were that ȳ feoffor pay to the feoffee, or to his heires, such a summe at such a day &c. There after the death of the feoffee (if he dy before the day limited) then the payment ought to bee made to the heire at the day set &c.

Also in such case of a Feoffement in Mortgage, a question hath been demanded, in what place the Feoffor is bound to tender the mony to the Feoffee at the day set &c. And some haue said, that vpon ȳ land so holden in Mortgage, for this, that the condition is dependant vpon the Land, and they haue said, that if the feoffor be ready vpon the Land, to pay the money at the least or day set, & the feoffee be not at that time there, that thē the feoffor is excluded and discharged of payment of the money, for this, that no default was in him. But it seemeth to some men that the law is contrary, and the default is in him: for hee is bound to seeke the Feoffee, if he be then at that time in any maner

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of place within the Realme of England. As if a man be bound in an Obligation, of xx. l. vpon condition indorced vpon the Obligatiõ, that if he pay to him to whom the Obligation is made, at ſuch a day ten pound, that then the Obligation of xx. l. ſhall loſe his force, & ſhall be holden for nought: In this caſe it behoueth him that made the Obligation to ſeeke him to whom the Obligation is made, if he be within England, and at the day ſet, to tender him the ſayd x. l. &c. Or otherwiſe he forfeiteth the ſumme of xx. l. compriſed within the Obligation, and ſo it ſeemeth in the other caſe &c. And though that ſome haue ſayd that the condition is dependant vpon the land, yet this is not proued that the reſiance of the condition to bee performed, ought to be made vpon the Land &c. No more then if the condition were, that if the feoffor ſhould do at ſuch a day &c. an eſpeciall corporall ſeruice to the feoffee, not naming the place where the corporall ſeruice ſhould be done: In this caſe the feoffor ought to doe ſuch corporall ſeruice at the day limited to the feoffee, in whatſoeuer place in England that the Feoffee be, if he will haue aduantage of the condition &c. And ſo it ſeemeth in that other caſe. And it ſeemeth to them, that it ſhall be more properly ſaid, that the eſtate of the land is dependant vpon the Condition &c. then to ſay, that the Condition is dependant vpon the Land: But inquire &c.

But if a Feoffement in fee be made reſer-

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uing to the ſeoffor an annuall rent, and for default of payment a reéntrie, &c. in this caſe it nédeth not to the tenaunt to tender the rent when it is behinde, but onely vpon the Land, for this, that this is a rent going out of the land, which is rent ſecke. For if the ſeoffor be once ſeiſed of his rent, and after hee commeth vpon the land &c. and the rent is denyed him &c. he may haue an Aſſiſe of Nouel diſſeiſin, for though he may enter, becauſe of the condition broken, yet he may chuſe, that is to ſay, to enter, or to haue an Aſſiſe. And ſo is there diuerſitie, as to the tender of the rent that is going out of the Land, & of tender of another ſumme in groſſe, which is not going out of the Land. And therefore it ſhall be ſure and a good thing for them that will make ſuch Feoffement in Mortgage, to put and ſet a ſpecial place when the money ſhall be paid. And the more ſpeciall that is to put, the better is for the feoffour. As if A. infeoffée B. to haue to him and to his heires vpon ſuch condition, that if A. pay to B. in the feaſt of Saint Michael th'Archangell next comming, in the Cathedrall Church of S. Paul in London, within foure houres next before the houre of none of ꝯ ſame Feaſt, at the rode loft of the North dore within the ſame Church, or any other certain place within the ſame Church: that thē it ſhalbe lawfull to the foreſaid A and to his heires to enter &c. In ſuch caſe he nédeth not to ſéeke the feoffée in any other place, but in the place compriſed

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in the Indenture, nor to be there more longer time then the time ſpecified in the ſame Indenture, for to render or pay the money to the feoffée.

Alſo, in ſuch caſe where the place of paimẽt is limited, the Feoffée is not bound to receiue the payment in none other place, but in the place ſo limited: But yet if he receiue the paiment in any other place, that is good enough, and as ſtrong for the Feoffor, as if the receit had beẽn in the place ſo limited &c.

Alſo in this caſe of feoffement in Mortgage, if the feoffor pay the Feoffée an horſe, or a cup of ſiluer, or a ring of gold, or any other ſuch thing in full ſatisfaction of the money, and the other this receiueth, this is good enough, & as ſtrong as if he had receiued the ſumme of money, though the horſe, or any of the other things bee not the twentieth part worth in value of the ſumme of money, for this, that the other hath accepted it in plaine & full ſatisfaction.

Alſo if a man enfeoffée another in feé vpon condition, that he and his heires ſhall yéeld to a ſtranger and his heires a yerely rent of xx.s. and if hee and his heires faile in payment of this, that then it ſhall be lawfull to the feoffor and to his heires to enter, this is a good condition: And yet in this caſe, though ſuch a yearely rent be called an annuall rent, this is not properly a rent, for if it ſhalbe rẽt, it ought to be rent ſeruice, rent charge, or rent ſecke, and it is none of them, for if the ſtraunger

were ſeiſed of this, and after it were to him denyed, he ſhall neuer haue an Aſſiſe of this, for this that it iſſueth not out of any Lands, and ſo the ſtraunger hath no remedie, if any ſuch yearely payment bee behind in this caſe, but that the feoffour and his heires may enter &c. and yet if the feoffour and his heires enter for default of payment, then ſuch rent is gone for euer. And ſo ſuch rent is but a payment ſet to the tenaunt and to his heires, that if they will not pay this after the forme of the Indenture, & they ſhall leeſe their land by the entry of the Feoffor or his heires, for default of payment. And in this caſe it ſéemeth that the feoffée and his heires ought to ſéeke the ſtranger and his heires if they be in England, becauſe that no place is limitted where the payment ſhall bee made, and becauſe that ſuch rent is not going out of any Land &c.

And here note well two things, one is that no rẽt that is properly ſaid rent, may be reſerued vpon any feoffement, gift or leaſe, but only to the feoffor or to ꝑ donor, or to the leſſor, or to their heires, & in no maner may bee reſerued to any ſtrãge perſon. But if 2. ioyntenãts make a leaſe by déed indented, reſeruing to the one a certain yerely rent, that is good enough to him to whome the rent is reſerued, for this that he is priuie to the leaſe and not a ſtraunger to this &c. The ſecond thing is, that no entry or reentry (which is all one) may be reſerued nor giuen to any perſon, but onely to the Feoffour

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or to the donor, or the leſſor, or to their heires, and ſuch entry may not be alienedor graunted to any perſon. For if a man let Land to another for terme of life by Indenture, yeelding to the leſſor & to his heires certaine rent, & for default of payment a reentry &c. if after the leſſor by a deed grant the reuerſion of the land to another in fee, and the Tenant for terme of life attorneth &c. if the rent after be behind, the grantee of the reuerſion may diſtraine for the rent, for this that the rent is incident to the reuerſion, but he may not enter into the land and put out the Tenant as the leſſor might, or his heires, if the reuerſion had beene continued in them, &c. And in this caſe the entry is taken away at all times, for the grantee of the reuerſion may not enter, Cauſa qua ſupra. See Stat. 32. H. 8. 34. if the Leaſe be by deed indented. And the leſſour nor his heires may not enter, for if the leſſour may enter, then he ought to be in his firſt eſtate &c. & that may not be, for this that he hath put from him the reuerſion &c.

Alſo if there be Lord & tenant, & the tenant make ſuch a Leaſe for terme of life, yeelding to the leſſour and to his heires, ſuch yerely rent, and for default of paiment a reentry &c. if after the leſſour die without heire, during the eſtate of the tenant for terme of life, by which the reuerſion commeth to the Lord by way of Eſcheat, and after the rent of the tenant for term of life is behind, the Lord may diſtraine the Tenaunt for the rent behind, but hee may not

enter into the land by force of the condition &c. for this that he is not heire to the feoffor &c.

Alſo if land be graunted to a man for terme of yeares vpon condition, that if he pay to the grauntor within 2. yeares xl. Markes, that then he ſhall haue ꝑ land to him & to his heires &c. In this caſe if the grantée enter by force of the graunt, and after he payeth to the grantor xl. Markes within the 2. yeares, yet hee hath nothing in the land, but for terme of 2. peres, for this that no Liuery of ſeiſin was to him made at the beginning, for if he had had franktenement and fée in this caſe, becauſe hee hath performed the condition, then ſhould hee haue franktenemēt by force of the firſt grant where no Liuery of ſeiſin was made thereof, which ſhould be againſt reaſon &c. But if the grantor had made liuery of ſeiſin to the grauntée by force of the graunt, than hath the grauntée the franketenement and the fée vpon the performance of the ſame condition.

Alſo, if lands be granted to a man for terme of fiue peres, vpon condition that he pay to the grantor within the firſt 2. peres xl. Marks, that then he ſhall haue fée, or elſe but for terme of v. peres, & liuery of ſeiſin is made to him by force of the graunt: Now he hath fée ſimple conditionall &c. and if in this caſe the grantée pay not to the grauntor the xl. markes within the ſame 2. firſt yeares, then immediatly after the ſame 2. yeares the fée & the franketenement is and ſhalbe adiudged to the grantor, for this

that

that the grauntor may not after the two yeres incontinent enter vpon the grauntée, for this that the grauntée hath yet little by thrée yeres to haue and occupy the Land by force of the same graunt. And so for this, that the condition on part of the grauntee is broken, and the grauntor may not enter, the Law shal put the fée and franktenement in the grauntor: For if the grantee in this case make wast, then after the breaking of the condition &c. and after the two yeres the grauntor shal haue his writ of waste, and this is a good proofe that the reuersion is to him &c. But in such case of feoffements vpon condition where the feoffor may enter lawfully for the condition broken &c. There the feoffée hath the franktenement before the entry &c.

Also, if a Feoffement bee made vpon such condition, that the Feoffée shall giue the Land to the Feoffor, and to the wife of the Feoffor, to haue and to hold to them and to the heires of their two bodies ingendred, and for default of such issue, to remaine to the right heires of the Feoffour: In this case if the Husband dye liuing the wife, before estate in the tayle made to him, then ought the feoffée by the law to make estate to the wife, as like to the condition, and as like to the intent of the condition as he may make it, that is to say, to let the land to the wife for terme of life without impeachment of wast, the remainder after her decease to the heires ingendred of the body of her

husband & hers, & for default of such issue, the remainder to the right heires of the husband. And the cause why the Lease shall be made in this case to the woman sole without impeachment of wast, is for this, that the condition is, that the estate shalbe made to the husband and his wife in tayle. And if such estate had been made in the life of the husband, then after the death of her husband shee hath estate in the taile sole, which estate is without impeachmēt of wast: and so it is reason, that if after a man may make estate to the intent of the condition &c that he shal make it &c. though that she cannot haue estate in the taile as she might haue had, if the gift in the taile had been made to the husband, & to her in the life of her husband &c.

Also in this case if the husband and the wife had issue & die before the gift in the taile made vnto them &c. then ought the Feoffē to make estate to the issue, and to the heires of the Father and mother ingendred, and for default of such issue &c. the remainder to the right heires of the Husband &c. And the same Law is in other cases semblable. And if such a Feoffour will not make such estate when he is reasonably required by them that ought to haue estate by force of the condition &c. then may the Feoffor and his heires enter &c.

feoffee

Also, if a Feoffement be made vpon condition, that the Feoffee shall infeoffe many men, to haue and to hold, to them and to their heires for euer, and all they that ought to

haue

haue estate, die before any estate made vnto them, then ought the feoffée to make the estate to the heires of him that suruiueth of them, to haue and to hold to him, and to the heires of him that suruiueth &c.

Also, if a feoffement be made vpon condition to enfeoffe another, or to giue in the taile to an other &c. if the feoffee before the performing of the conditiõ enfeoffe a strange person, or make a Lease for terme of life, then may the Feoffor and his heires enter &c. for this, that hee hath disabled himselfe to performe the condition, insomuch that hee made estate to another &c. In such maner it is, if the feffée before the condition performed, let the same Land to a stranger for terme of yeres: In this case the feoffor or his heires may enter &c. for this that the feffee hath disabled himselfe to make estate of the tenements according to that that was in the tenements when the estate thereof was made vnto him, for if he will make estate according to the Condition &c. then may the Feoffée for terme of yeares enter & put out him to whom the estate is made &c. and to occupie this during his terme. And many haue sayd, that if such a feffemẽt be made to a man sole vpon the same Condition, and before that hee hath performed the condition he taketh a wife, then the feoffor or his heire may incontinent enter, for this that if hee haue made estate according to the condition, & after dieth, his wife shalbe endowed, & may recouer her dowrie by a writ of

Dower &c. And ſo by taking of a wife, the tenements be put in other plite then they were at the time of the Feoffement vpon condition, for this, that no ſuch woman was dowable, nor ſhould be endowed by the Law &c.

In the ſame maner it is, if the feoffor charge the land by his deed of a rent charge before the performing of the condition, or bee bound in a ſtatute Staple, or ſtatute Merchant, that in ſuch caſes, the feoffor & his heires may enter, Cauſa qua ſupra. For whoſoeuer commeth to the tenements by the feoffement of the feoffee then the tenements muſt be lyable, and be put in execution by force of the ſtatute aforeſaid. But when the Feoffor or his heires, for the cauſes aforeſaid haue entred ſo as they ought, as it ſeemeth &c. Then all ſuch things that before ſuch entry may trouble or incumber the tenements ſo giuen vpon condition, as touching the ſame tenements be vtterly defeated &c.

Alſo, if a man make a deed of feoffement to another, & in the deed is no condition &c. And whē the feoffor will make to him liuery of ſeiſin by force of the ſame deed, he maketh liuery of ſeiſin vpon certaine conditions &c. In this caſe nothing of the tenements paſſeth by the deed, for this, that the condition is not compriſed in the deed, & the feoffement is of ſuch force as if no ſuch deed had beene thereof made &c.

Alſo if a feffement be made vpon ſuch condition, that the feoffee ſhall not alien the land to any man, this condition is voyd, for this, that

when

when a man is infeoffed in Lands or Tenements, hee hath power to alien them to ſome perſon by the law. For if ſuch condition ſhould be good, then the condition putteth him out of all the power that the Lawe giueth, which ſhould bee againſt reaſon, and for this ſuch condition is voyde. But if the condition bee ſuch, that the feoffee ſhall not alien to one ſuch, naming his name, or to any of his heires, or his iſſues &c. or ſuch other like, the which condition taketh not away all the power of alienation of the feoffee &c. then ſuch condition is good.

Alſo if Tenements bee giuen in the taile vpon ſuch condition, that the Tenaunt in the taile, nor his heires &c. ſhall not alien in fee, nor in taile, nor for terme of anothers life, but for their owne liues &c. ſuch alienation and condition is good: And the cauſe is for this, that when he maketh ſuch alienation and diſcontinuance, hee doth contrary to the intent, for which the Statute of Weſtminſter the ſecond was made, by which eſtatute, the eſtates in the taile be ordained, for it is proued by the words compriſed in the ſame eſtatute, that the intent of the making of the ſame eſtatute was, that the will of the donor in ſuch caſes ſhould be obſerued. And when tenant in the taile maketh ſuch diſcontinuance, he doth the contrary to that &c. And alſo in eſtates in the taile of any Tenements when the reuerſion of the fee ſimple is in another perſon, when ſuch diſcontinuance

tinuance is made, then the fee ſimple in the reuerſion, or the fée ſimple in the remainder is diſcontinued, and for that that the Tenant in the taile ſhall doe no ſuch thing againſt right, ſuch conditions are good, as is aforeſaid &c.

Alſo a man may giue land in the taile vpon ſuch condition, that if the tenant in the taile or his heires alien in fée, or in taile, or for terme of anothers life &c. And alſo, that all the iſſues comming of the tenãt in the taile be dead without iſſue, that then it ſhal be lawful to the Donor and to his heires to enter &c. & by ſuch way the right of the taile may bee ſaued after ſuch diſcontinuance to the iſſue in the tayle if there be any, ſo that by way of entry of the donor or of his heires, the taile ſhal not be defeated by ſuch condition, and yet if the Tenant in the taile in this caſe, or his heires make any diſcontinuance &c. hee in the reuerſion or his heires after this that the tayle is determined for default of iſſue &c. may enter into ẽ land by force of the ſame condition, and ſhal not be driuen to ſue a writ of Formedon in the reuerter

Alſo, a man may not plead in an action, that eſtate was made in fée, in the taile, or for term of life vpon condition, but if he vouch a record therof, or ſhew a writing vnder ſeale, proouing the ſame condition; for it is a common eruditi-on and learning, that a man by pleading ſhall not defeat any eſtate of frankeneemẽt by force of any ſuch condition, vnles he ſhew the proof of ſuch condition in writing &c. except it bee in

ſome eſpeciall caſe: but of chattels reals, as of a leaſe made for terme of yeares, or of graunts of wards made by wardens in chiualry, and of ſuch other &c. a man may plead that ſuch gifts or graunts were made vpon condition &c. without ſhewing of any writing of condition. And in the ſame manner a man may do of gifts and graunts of Chattels perſonals, and of contracts perſonals &c.

Alſo, though that a man in ſome action may not plead a condition that toucheth and cõcerneth franktenement without ſhewing of writing thereof, as it is aforeſaid, yet a man may bee holpen vpon ſuch condition by the verdict of xij. men taken at large in Aſſiſe of diſſeiſin, or in ſome other action where the Juſtices will take the verdict of the twelue Jurors at large. As put the caſe that a man ſeiſed of certaine Land in fee, letteth the ſame land for terme of life without deed, vpon condition to yeeld to the Leſſour a certaine rent, and for default of payment a reentry &c. by force of which the leſſee is ſeiſed as of a franketenement, and after the rent is behinde, by which the Leſſour entreth into the land, and after the leſſee arraigneth an Aſſiſe of Nouel diſſeiſin of the land againſt the leſſor, the which pleadeth that he doth no wrong, ne no diſſeiſin, and vpon this the Aſſiſe is taken.

In this caſe the Recognitors of the Aſſiſe may ſay and yeeld to the Juſtices their verdict at large vpon all the matter, as to ſay, that the defen-

defendant was ſeiſed, and ſo ſeiſed, let the ſame Land to the plaintife for terme of his life, to pẽld to the leſſor ſuch annuall rent payable at ſuch a feaſt, & vpon ſuch condition, that if the rent be behind at any ſuch feaſt that it ought to be payed, that then it ſhall be lawfull to the Leſſor to enter &c. by force of which Leaſe the plaintif was ſeiſed in his demeſne as of frank-tenement, & after the rent was behind at ſuch a feaſt, in ſuch a yeare &c. for which the Leſſor entred into the land vpon the poſſeſſion of the leſſee, & prayeth the diſcretion of the Juſtices, if this be a diſſeiſin done by the plaintif or not. And then for this that it appeareth to the Juſtices, that this was no diſſeiſin done to the plaintife, inſomuch that, that the entrie of the leſſor was lawful vnto him, ỹ Juſtices ought to giue iudgement that the plaintife ſhal take nothing by his writ of Aſſiſe. And ſo in ſuch caſe the leſſor ſhall be holpen, & yet no writing was euer made of the condition, for aſwell as the Jurors may haue knowledge of the leaſe, in the ſame maner may they haue knowledge of the condition rehearſed in the leaſe. In the ſame maner it is of a feoffement in fee, or a gift in the taile vpon condition, though neuer writing were made thereof &c. And as it is ſaid of a verdict at large in Aſſiſe, in the ſame maner it is of a writ of Entre founded vpon diſſeiſin, & in all other actions where the Juſtices will take a verdict at large, there where the verdict at large is made, the nature of the matter is

put

put in the iſſue. Alſo, in ſuch caſe where the Enqueſt may ſay their verdict at large, if they will take vpon them the knowledge of the law vpon the matter, they may ſay their verdict generall, as it is put in their charge, as in the caſe afore ſaid, they may well ſay that the leſſor diſſeiſed not the leſſée if they will &c.

Alſo in the ſame caſe, if the caſe were ſuch, that after this that the Leſſor hath entred for default of payment &c. that the Leſſée had entred vpon the leſſor, and him diſſeiſed: In this caſe if the leſſor arraigneth an Aſſiſe againſt the leſſée, the leſſée may barre him of his Aſſiſe, for he may plead againſt him in barre, how the leſſor that is plaintife made a leaſe to the defendant for terme of life, ſauing the reuerſion to the plaintife, the which is a good plea in barre, inſomuch to that he knowledgeth the reuerſiō to be to the plaintife, and in this caſe hee hath no matter to helpe him, but the condition made vpon the Leaſe, and that he may not plead, for that he hath no writing, and inſomuch that he may not anſwere to the barre, hee ſhall be barred. And ſo in this caſe yee may ſée, that a man is ſeiſed, and he ſhall haue Aſſiſe, and yet if the leſſée be plaintife, and the leſſor defendāt, he ſhall barre the leſſée by verdict of the aſſiſe. But in this caſe where the leſſée is defendant, if he will not plead the ſaid plea in barre, but plead no wrong ne diſſeiſin, then the leſſor ſhal recouer by Aſſiſe, Cauſa qua ſupra.

Alſo becauſe ſuch conditions bee moſt commonly

monly put & ſpecified in deedes indented, ſome little thing ſhalbe ſaid here (to thee my ſonne) of Indẽtures, & of a deed Poll containing cõditiõs. And it is to wit, that if the indẽture be bipartite, or tripartite, or quadripartite, all the parts of the Indenture be but one deed in the law, & euery part of the Indenture is of himſelf of as great force and effect, as all the parts together. And the making of indentures is in 2. maners. One is to make them in the third perſon, another maner is to make them in the firſt perſon. The making of the third perſõ is as in ſuch forme. This Indenture made betweene A. of B. of the one part, & C. of D. of ỹ other part, witneſſeth, that the foreſaid A. of B. hath gi[illegible] & granted, & by this preſẽt deed indented, hath cõfirmed to ỹ foreſaid C. of D. ſuch land, To haue &c. vpon the condition &c. In witnes whereof the parties beforeſaid interchangeably haue put to their ſeals: Or elſe thus. In witnes wherof to ỹ one part of this indẽture remaining with the ſaid C. of D. the foreſaid A. of B. hath put to his ſeale, & to the other part of the ſaid Indenture remaining with the ſaid A. of B. ỹ ſaid C. of D. hath put to his ſeal, giuẽ &c. Such Indẽtures are called indẽtures made in the third perſõ, for this that the verbes be in the third perſõ, and ſuch form of indẽtures is the more ſure making, for that it is more cõmonly vſed. The making of Indẽtures in the firſt perſon is of ſuch forme. To all true Chriſtian people to whom this pre-

present writing indented shall come, A. of B. greeting in our Lord euerlasting. Know ye me to haue giuen & granted, and by this my present deed indented to haue confirmed to C. of D. such land &c. Or else thus: Know all men that be present, and them that be to come, that I A. of B. haue giuen & granted, and by this my present deed indented haue cõfirmed to C. of D. such land &c. to haue &c. vpon the condition following: In witnes whereof aswell I the said A. of B. as ỹ aforesaid C. of D. to these Indentures interchangeably haue put to our seales: or else thus: In witnesse whereof to one part of this Indẽture I haue put to my seale, and to the other part of the same Indenture the foresaid C. of D. hath put to his seale &c.

And it semeth that such an Indẽture made in the first person, is as good in the law as the Indenture made in the third person, when both parties haue thereto put their seales, for in the Indenture made in the third person or in the first person, if mention be made that the grantor hath set his seale only, & not the grantee, then is the Indenture only the deed, of the grauntor. But where mention is made that the grantee hath set his Seale to the Indenture &c. then is the Indenture aswell the deed of the grauntor, as the deed of the grauntee, & thus it is the deed of both, and also euery part of the Indenture is the deed of both parties in such case &c.

Also, if estate bee made by Indenture to a

man

man for terme of his life, the remainder to an other in fee vpon condition &c. and if the Tenant for terme of life hath ſet his ſeale to one part of the Indenture, and after dyeth, and he in the remainder &c. entreth by force of his remainder, in this caſe he is holden to performe all the conditions compriſed within the Indenture, as the tenant for terme of life ought to doe in his life, and yet he in the remainder neuer ſealed any part of the Indenture: But the cauſe is, that inſomuch that hee entreth and agreeth to haue the Land by force of the Indenture, he is holden to perform the condition within the Indenture, if he will haue the Land &c.

Alſo if a Feoffement be made by deed Poll vpon condition &c. And for this that the condition is not performed, the Feoffour entreth and happeth the poſſeſſion of the deed Poll, if the feoffee bring an actiõ of that entry againſt the Feoffor, it hath beene a queſtion, if the feoffor may plead the Condition &c. by the deede Poll againſt the Feoffee: And ſome haue ſaid nay, inſomuch that it ſeemeth vnto them, that a deed Poll, and the property of the ſame deed appertaineth to him to whome the deede is made, and not to him that made the deede, and inſomuch that ſuch a deede appertaineth not to the Feoffor, it ſeemeth to them that he may not plead this deede &c. And other haue ſaid the contrary, and haue ſhewed diuers cauſes. One is, if the caſe bee ſuch, that in the action be-

betwæn them the feoffée plead the ſame dæd, & ſhew this to the court: In this caſe inſomuch that the dæd is in the Court, the Feoffor may ſhew to the Court, how in the dæd be diuers conditions to bee performed of the part of the feoffée, and for this that they be not performed, he entred &c. and thereto he ſhalbe receiued: by the ſame reaſon when the feoffor hath the dæd in hãd, & ſheweth it to the court, he ſhalbe well receiued to plead of this &c. and namely when the feoffor is priuie to the dæd, for he ought to be priuie to the dæd when he made the dæd.

Alſo if two men make or doe a treſpas to an other, the which releaſeth to one of them by his dæde all actions perſonals, and notwithſtanding hee ſueth an action of Treſpaſſe againſt the other, the defendant may well ſhew that the treſpaſſe was done by him & an other his fellow, and that the plaintife by the dæde that he ſhewed forth releaſeth to his fellow all actions perſonals, and yet ſuch dæd appertaineth to his fellow, and not vnto him, but for this that hee may haue aduantage by the dæd, if he will ſhew the dæd to the Court, hee may well plead &c. Therefore by the ſame reaſon in the other caſe, when the Feoffor ought to haue aduauntage by the condition compriſed within the dæd Poll.

Alſo, if the feoffée gaue or granted the dæd Poll to the Feoffor, ſuch graunt ſhall be good, and then the dæd, and the property of the dæd appertaineth to the Feoffour. And when the

Feoffour hath the deed in hand, and pleadeth it to the Court, it ſhall be rather vnderſtood that he came to the deed by a lawful meane then by a tortious meane. And ſo it ſeemeth that hee may well plead ſuch a deed Poll, that comprehendeth condition &c. if he haue the deed in hād &c. Ideo ſemper quære de dubijs, quia per rationes peruenitur ad legit' rationem.

Eſtates that men haue vpon Condition in the Law, be ſuch eſtates that haue Condition in the Law annexed to them, though it be not ſpecified in writing, ſo as a man graunt by his deed to another the office of a Parkerſhip of a Parke, to haue and to occupy the ſame office for terme of his life, the eſtate that hee hath in the office, is vpon condition in the Law, that is to ſay, that the Parker well and truely ſhall keepe the Parke, and do that that to the office appertaineth to doe: or otherwiſe that it ſhall be lawfull to the grantor and to his heires to put him out, and to graunt that to another if he will &c. And ſuch condition as is vnderſtood by the law to be annexed to ſome thing, is as ſtrong as if the Condition were ſet or put in writing. In the ſame maner it is of grants of offices of Stewards, Conſtables, Bedels, Baillifes, and other officers. But if ſuch office bee graunted to a man to haue & to occupie by him or by his deputy, then if the office be occupied by him or by his deputy, as it ought by the Law to be occupied, this ſufficeth for him, or els the grantor or his heires may put him out

as

as is aforesaid.

Also, estates of lands or tenements may be vpon condition in the law, though that vpon the estate made, there was no rehearsall made of the condition: As put the case that a lease be made to the husband and his wife, to haue and to hold to them during the couerture betweene them, in this case they haue estate for terme of their two liues vpon conditiõ in the law, that is to say, if one of thẽ die, or if diuorce be made betweẽ them, that then it shalbe lawful to the lessor, & his heires to enter &c. & that they haue estate for terme of their two liues, it is proued thus: Euery man that hath estate of frankstenement in any lands or tenements, either hee hath estate in fée, or in fée taile, or for terme of life, or for terme of anothers life, & yet by such lease they haue frankstenement, but they haue not by the grant, fée, nor taile, nor for terme of anothers life, Ergo, they haue estate for terme of their two liues, but this is vpon condition in the law in forme aforesaid. And in this case if they make waste, the lessor shall haue against them a writ of waste, supposing by his writ Quod tenẽt ad terminum vitæ &c. but in his plee hee shall declare how & in what maner the lease was made. In the same maner it is, if an abbot make a lease to a man, to haue & to hold during the time ꝑ the lessor is Abbot: In this case the lessee hath estate for terme of his own life: but this is vpon condition in law, that is to say, ꝑ if ꝑ abbot die, or resigne, or be deposed,

it shalbe lawful to his successors to enter &c.

Also, a man may see in the Booke of Assises, An. 38. E. 3. a plee of assise in this forme that insueth. Assise of Nouel disseisin was sometime brought against one A. that pleadeth to the assise, & was found by verdict that the auncestor of the plaintife deuised the tenemẽts to be sold by the defendant ꝑ was his executor to make distribution of the money for his soule. And it was found, that a man after the death of the testator tendred him a certain summe of mony for the tenements, but not to the value, & that the executor after held the Tenements in his owne hand by two yeres, to the intent to haue sold the tenements more deares to some other: And it was found that hee had all the while after taken the profits of the tenements to his owne vse, without any thing doing for the soule of the dead. ¶ Mombray, the executor in such case is holden by the law to make such sale as soone as he may after the death of the testator, and it is found that he refused to make the sale, & so the default was in him: And also by force of the deuise he was holden to haue put all the profits of the said tenements to the vse of the dead, and it is found that he hath taken them to his owne vse, and so another default is in him, wherefore it was iudged that the plaintife should recouer &c. And so it appeareth in the said iudgement, ꝑ by force of the said deuise the executor had none estate or power in the tenements, but vpon condition in the law &c.

And

And in ſuch caſes it néedeth not to haue ſhewed any déede, rehearſing the condition &c. Ex paucis dictis intendere plurima poſſis. More ſhalbe ſaid of conditions in the chapter of Deſcents that take away entrie, and in the chapter of Releaſes, and in the Chapter of Diſcontinuace.

Deſcents.

DEſcents that take away entries be in two manners, that is to ſay, where the deſcent is in fée, or in fée taile. Deſcent in fée that taketh away entrie is, if a man ſeiſed of certaine lands or tenements, is diſſeiſed, and the diſſeiſor hath iſſue and dyeth of ſuch eſtate ſeiſed: Now the tenements deſcend to the iſſue of the diſſeiſor by courſe of the law, as heire vnto him. And for this that the law putteth the lands or tenements vpon the iſſue, and the iſſue commeth to the tenements by courſe of the law, & not of his owne déed, the entrie of the diſſeiſée is taken away, and he is thereof put to his writ of Entre vpon diſſeiſin, againſt the heire of the diſſeiſor to recouer the Land.

Deſcent in the taile that taketh away entrie is, if a man bee diſſeiſed, and the diſſeiſor giueth the ſame Land to another in the taile, and the tenaunt in the tayle hath iſſue and dyeth ſeiſed of ſuch eſtate, and the iſſue entreth, in this caſe the entrie of the diſſeiſée is taken away, and hee is put to ſue againſt the iſſue of the tenant in the tayle, a writ of Entrie vpon

disseisin &c.

And note well, that in such descents that take away entries, it behoueth that a man die seised in his demesne as of fée, or of fée taile, for dying seised for terme of life, or for terme of an others life, shall neuer take away the entry &c.

Also a descent of reuersion, or of remainder shall neuer také away entry &c. so that in such cases that take away entries by force of descents, it behoueth that he that died seised haue fée & franketenement at the time of his dying, or else such descent taketh not away entry.

Also as it is said of descents ẏ descend to the issue of him that dieth seised &c. ẏ same law is where they haue no issue, but ẏ tenemẽts descẽd to ẏ brother, or to the sister, or to the vncle, or to some other cosin of him ẏ dieth seised &c.

Also, if there be Lord and Tenant, and the Tenant be disseised, and the disseisor alieneth to another in Fée, & the alienée dieth without heire, and the Lord entreth as in his escheat: In this case the disseisée may enter vpon the Lord, for this, that the Lord commeth not to the Land by descent, but by escheat.

Also if a man seised of certaine land in fée, or in fée taile vpon cõdition to yéeld certain rent, or vpon other condition, though that such tenant seised in fée, or in fée taile, die seised, yet if ẏ condition be brokẽ in their life, or after their decease &c. this taketh not away the entry of the feoffor, nor of the donor, or of their heirs, for this that the tenancy is charged with the condition,

dition, and the estate of the tenancy is conditionall in whose hands soeuer the tenancy shall come &c.

Also, if such a tenant vpon condition be disseised, & the disseisor die therof seised, & the land descēdeth to ꝑ heire of the disseisor, now ꝑ entry of the tenant vpon conditiō that was disseised is taken away, but if the condition be broken &c. thē may the feoffor or the donor ꝑ made the estate or their heirs enter &c. Causa qua supra.

Also, if a disseisor die seised, & his heire enter &c. the which endoweth the wife of the disseisor of the third part of the tenemēts, in this case, as to the third that is assigned to the wife in dower, incontinent anon after that the wife entreth and hath possession of the same third part, the disseisée may lawfully enter vpon the possession of the wife in the same third part. And the cause is for this that when the wife hath her dower she shall be adiudged in, rather immediatly by her husband then by the heire, & so as to the franktenement of the same third part, the descent is defeated. And so ye may see how before the dowment the disseisée might not enter in any part &c. and after the dowment he may enter vpon the wife, and yet hee may not enter vpon the other two parts that the heire of the disseisor hath by descent &c.

Also, if a woman be seised of Land in fee, whereof I haue right and title to enter, if the woman take an Husband and haue issue betweene them, and after the wife dyeth seised,

and after that the husband dyeth, and the issue entreth &c. in this case I may enter upon the possession of the issue, for this that the issue commeth not to the tenements immediatly by deſcēt after the death of his mother. An. 9. H. 7. fol. 24. it is holden contrarie.

Also, if a disseisor infeoffe his father, and the father entreth and dieth of such estate seised, by which the Tenemēts deſcend to the disseisor, as to the sonne and heire &c. In this case the disseisée may well enter upon the disseisor, notwithstanding the deſcent, for this, that as to ꝑ disseisin, the disseisor shalbe adiudged in but as the disseisor, notwithstanding the deſcent.

Also, if a man seised of certaine land in his demeane as of fée, hath issue two sonnes & dyeth, and the ponger sonne entreth by abatemēt in the Land, the which hath issue, and of this dyeth seised, and the tenements deſcend to the issue, and the issue entreth into the Land: In this case the elder sonne or his heires may enter by the Lawe upon the issue of the ponger sonne, notwithstanding the deſcent, for this, that when the ponger sonne abated in the land after the death of his father, before any entrie of the elder, the law intendeth that he entreth in clayming as heire vnto his Father, and for this that the elder brother clapmeth by the same title, that is to say, as heire vnto his Father, he & his heires may enter upon the issue of the ponger brother, notwithstanding the deſcent &c. for this, that they claim by one seike

title.

title. And in the ſame maner it ſhall be if there bée many deſcents from one iſſue to an other iſſue of the ponger ſonne &c. But in ſuch caſe, if the father were ſeiſed of certain lands in fée, and hath iſſue two ſonnes and dyeth, and the elder ſonne entreth and is ſeiſed &c. And after the ponger ſonne diſſeiſeth him, by which diſſeiſin he is ſeiſed of fée, and hath iſſue, and of ſuch eſtate dyeth ſeiſed, then the elder brother may not enter, but is put to his writ of Entre vpon diſſeiſin for to recouer the land. And the cauſe is for this that the ponger brother commeth to the Tenements by a wrong diſſeiſin made vnto his elder brother, & for that wrong the Law may not intend that he claymeth as heire to his father, no more then if a ſtraunge perſon had diſſeiſed the elder brother that neuer had any title &c. And ſo may yée ſée the diuerſitie, where the ponger brother entreth after the death of his father, before any entrie made by the elder brother in ſuch caſe &c. And where the elder brother entreth after ꝑ death of his father, & is diſſeiſed by the ponger brother &c. In the ſame maner if a man ſeiſed of certain land in fée, hath iſſue two daughters, & dyeth, & the elder daughter entreth in the land, claiming all the Land to her, and thereof onely taketh the profits, and hath iſſue & dyeth ſeiſed by which her iſſue entreth, which iſſue hath iſſue and dyeth ſeiſed, and the ſecond iſſue entreth &c. & ſic vltra, yet the ponger daughter and her iſſue, as to the halfe may enter vpon

euery iſſue of the elder daughter, notwithſtanding ſuch deſcent, for this that they claime by one ſeike title &c. But in ſuch caſe if both two ſiſters come into the Land to enter after the death of their father, & thereof were ſeiſed, and after the elder ſiſter therof diſſeiſed the ponger ſiſter of that that to her belongeth, & thereof is ſeiſed in fee, & hath iſſue, & of ſuch eſtate dieth ſeiſed, by which the Tenements deſcend to the iſſue of the elder ſiſter, then the ponger ſiſter or her heires may not enter &c. Cauſa qua ſupra.

Alſo, if a man ſeiſed of certaine Land hath iſſue two ſonnes, and the elder brother is baſtard, and the ponger brother mulier, and the father dyeth, and the baſtard entreth and claimeth as heire vnto his father, and occupieth the Land all his life without any entrie made vpon him by the mulier, and the Baſtard hath iſſue and dyeth of ſuch eſtate ſeiſed in Fee, and the Land deſcendeth to his iſſue, and his iſſue entreth &c. in this caſe the mulier is without remedy, for he may not enter, nor he ſhall haue no action for to recouer the land, for this that it is an auncient law in ſuch caſe vſed. But it hath beene an opinion of ſome men, that that ſhall bee vnderſtood where the Father hath a ſonne a baſtard by a woman, & after hee weddeth the ſame woman, and after the eſpouſels he hath iſſue by the ſame woman a ſonne or a daughter mulier, & the father dyeth &c. if ſuch a Baſtard enter, &c. and hath iſſue, and dyeth ſeiſed &c. Then ſhall the iſſue of ſuch a baſtard

haue

haue the land clerely to him, as it is aforesaid &c. and not any other Bastard borne of the mother that was not espoused to his Father. And this is a good and reasonable opinion: For such a bastard borne before the espousels solemnized betweene his father and his mother, by the Law of holy Church is mulier, though that by the Law of the Land hee is a Bastard borne, and so he hath colour of entry as heire to his Father, for this that hee is by one Law mulier, that is to say, by the Law of holy Church. But otherwise it is of a bastard that hath no manner of colour to enter as heire, insomuch that he may not in no Law be said mulier, &c. For such a bastard is said Quasi nullius filius. But in such case aforesaid, where the Bastard entreth after the death of his Father, and the mulier putteth him out, and after the Bastard disseiseth the mulier, and hath issue, and dyeth seised, and the issue entreth, then the Mulier may haue a Writ of Entre upon disseisin against the issue of the bastard, and recouer the land &c. And so may ye see the diuersity where such a bastard continueth his possession all his life without any interruption, and where the mulier entreth and interrupted the possession of such a Bastard.

Also, if a child within age haue title & cause to enter into any Lands or tenements upon another that is seised in Fée, or in Fée taile of the same lands or tenements, if such a man

that

that is ſo ſeiſed dye of ſuch eſtate ſo ſeiſed, and the tenements deſcend to his iſſue, during the time that the childe is within age, ſuch deſcent ſhall not tolle the entrie of the childe, but hee may enter vpon the iſſue that is in by deſcent &c. for this that no laches ſhall bee adiuged in a childe within age in ſuch caſe &c.

Alſo, if the huſband and his wife, as in right of the wife haue title and right to enter in the Tenements that another hath in fee, or in fee taile, & ſuch a Tenant dyeth ſeiſed &c. In ſuch caſe the entry of the Huſband is taken away vpō the heire that is in by deſcēt. But if ỹ huſbād dy, then ỹ wife may wel enter vpon ỹ iſſue which is in by deſcent, for this ỹ the laches of the huſband ſhall not turne to the wife & to her heires in preiudice nor in damage in ſuch caſe, but that the wife & her heires may well enter where ſuch deſcēt is during the couerture &c.

Alſo, if a man that is not of whole minde, that is to ſay in Latine, Qui non eſt compos mentis, hath cauſe to enter in any ſuch Tenements, if ſuch deſcēt vt ſupra be had in his life during the time that he was out of his mind, and after dye, his heires may well enter vpon him that is in by deſcent. And in this may ye ſee a caſe that ỹ heire may enter, & yet his anceſtor that had the ſame title may not enter, for he that was out of his mind at the time of ſuch deſcent, if he will enter after ſuch a deſcēt, if an action vpon this be ſued againſt him, hee hath nothing for him to plead, or to help him, but to

ſay

ſay that he was out of mind at the time of ſuch deſcent &c. And he ſhall not be receiued to ſay this, for this that no man of full age ſhall bee receiued in any plee by the Law to diſable his owne perſon. But the heire may well diſable the perſon of his anceſtor for aduantage of the heire in ſuch caſe, for this, that no laches may be adiudged by the law in him that hath no diſcretion in ſuch caſe. And if ſuch a man out of his mind make a feoffement &c. he may not enter, ne haue a writ called Dum non fuit compos mentis &c. Cauſa qua ſupra. But after his death his heir may well enter, or haue the ſame writ Dū nō fuit cōpos mētis at his electiō &c.

Alſo, if I be diſſeiſed by a childe within age that alieneth to another in fee, and the alienee dyeth ſeiſed, and the tenements deſcend to his heire, the child being within age, mine entry is taken away. But if the childe within age enter vpon the heire that is in by diſcent, as he well may, for this that the deſcent was during his nonage, then I may well enter vpon the Diſſeiſor, for this, that by his entrie hee hath defeated and annulled the deſcent.

And in the ſame manner it is, where I am diſſeiſed, & the diſſeiſor maketh a feoffement in fee vpon condition &c. & the feoffee dieth of ſuch eſtate ſeiſed &c I may not enter vpon the heire of the feoffee: But if the condition be broke, ſo that by ſuch cauſe the feoffor entreth vpon the heir, now may I well enter, for this that whē the feoffor or his heires enter for the conditiō

broken,

broken, the deſcent is vtterly defeated.

Alſo, if I be diſſeiſed, and the diſſeiſor hath iſſue and entreth into Religion, by force of which the Lands deſcend to his iſſue, in this caſe I may well enter vpon the iſſue, and yet there was a deſcent: But for this that ſuch deſcent commeth to the iſſue by the Fathers deed, that is to ſay, for this that he entred into religion &c. and his deſcent commeth not to him by the deed of God, that is to ſay, by death &c. mine entrie is congeable and lawfull, for if I arraigne an Aſſiſe of Nouel diſſeiſin againſt my diſſeiſor, though he after enter into Religion this ſhall not abate my writ: But my writ this notwithſtanding ſhall abide in his force & ſtrength, and my recouery againſt him ſhall be good. By the ſame reaſon the deſcent that came to his iſſue by his own deed may not put me from mine entry &c.

Alſo, if I let to a man certaine Lands for terme of xx yeares, and another diſſeiſeth mee, and putteth out the termor, and dyeth ſeiſed, and the tenements deſcend vnto his heire, I may not enter, and yet the Leſſee for terme of yeares may well enter, for this that by his entrie hee putteth not out the heire that is in by deſcent from the franketenement that vnto him deſcended, but onely claymeth to haue the tenements for terme of yeeres, the which is no expulſing of the Franketenement of the heire that is in by deſcent. But otherwiſe it is where my tenaunt for terme of life is diſſeiſed

&c.

&c. Causa qua supra.

Also, it is said that if a man be seised of tenements in fée by occupation in time of warre, & dyeth thereof seised in time of war, and the tenements descend to his heire, such descent putteth out no man of his entry. And of this a man may sée a plée in a writ of Ayel, An. 7. E. 2.

Also that no dying seised (where all the tenements come to another by succession) shall take away the entry of any person &c. For of Prelates, Abots, Priors, Deanes, or Parsons of Churches &c. though that there were 20. successors, this putteth no man from his entrie &c. More shall be said of descents in the Chapter of Continuall claime &c. Sée the statute 32. H. 8. cap. 33.

Continuall claime.

COntinuall claime is, where a man hath right & title to enter in any Lands or tenemẽts whereof another is seised in fée, or in fée taile, if hee that hath title to enter make continual claime to the Lands or tenements, before the dying seised of him that holdeth the tenements: Then though such a tenant die thereof seised, and the Lands and tenements descend to his heire, yet may hee that hath made such claime, or his heires, enter into the lands and tenements descended, because of the continuall claime made, notwithstanding such descent. As in case a man be disseised, and the disseisée ma-

maketh continuall claime to the tenements in the life of the Disseisor, though the disseisor dy seised in fee, and the land descendeth vpon his heires, yet may the disseisee enter vpon the possession of the heire, notwithstanding such descent.

In the same maner it is, if tenant for terme of life alien in fee, he in the reuersion, or he in the remainder may enter vpō the alienee. And if such alienee dye seised of such estate without continuall claime made to the tenements before the dying seised of the alienee, & the tenements because of the dying seised of the alienee descend vnto the heire of the alienee, then may not he in the reuersion, nor he in the remainder enter. But if he in the reuersion, or hee in the remainder that hath cause to enter vpon the alienee, made continuall claim to the tenements before the dying seised of the alienee, then such a man may enter after the death of the alienee, aswell as he might in his life &c.

Also, if Lands bee let vnto a man for terme of his life, the remainder vnto an other for terme of life, the remainder vnto the third in fee, if the Tenant for terme of life alien to another in fee, and he in the remainder for terme of life maketh continuall claime vnto the land before the dying seised of the alienee, & after the alienee dyeth &c. and after hee in the remainder for terme of life dyeth before any entry made by him: In this case he in the remainder in Fee, may enter vpon the heire of the alienee, because

because of continuall claime made by him that had ye remainder for terme of life, for this that such right that hee had to enter, shall goe and remaine to him in the remainder after him, in so much that he in the remainder in fee may not enter vpon the alienée in fee during the life of him in the remainder for terme of life, and because he might not make continuall claime, for none may make continuall claime but when he hath title to enter. But it is to bee shewed to thee my child how & in what maner continuall claime shalbe made, & to learne this, 3. things there be to be vnderstood. The first thing is, if a man haue cause to haue any Lands or tenements in diuers townes within one Shire, if he enter in any parcell of the Lands or tenements that be in one towne, in the name of all the lands or tenements to which he hath right to enter within all the townes in ye same shire, by such entry he hath as good possessiō & seisin of such lands or tenements wherof he hath title to enter, as if he had entred into euery parcell, and this séemeth great reason, for if a man will infeoffé another without déed, of certaine lands or tenements ye he hath in many townes within one shire, & he will deliuer seisin to the feoffée of parcell of the tenements within one towne in the name of all the lands & tenemẽts that he hath in ye same towne, & in all the other towns &c. all the said tenements &c. shall passe by force of the said Liuery of seisin to him to whom such feoffement in such maner is made:

And yet he to whō such liuery of seisin is made hath no right to all the lands & tenemēts in al the townes, but by reason of the liuery of seisin made of parcell of ꝑ lands or tenements in one towne, a multo fortiori it seemeth good reason that when a man hath title to enter into lands or tenemēts in diuers townes within one shire before any entry by him made, that by the entry of him made in parcell of the tenements in one towne, in the name of all the lands & tenements to the which he hath title to enter within the same shire, this is a seisin of all in him, & by such entrie hee hath possession and seisin in deed, as if he had entred into any parcell &c.

The second is to vnderstand, that if a man hath title to enter into any lands or tenemēts, if he dare not enter into the same Lands or tenemēts, nor in any parcell therof for doubt of beating, or for doubt of mayming, or for doubt of both, if he go & approch as nigh ꝑ tenemēts as he dare for such doubt, & claime by words the Tenements to be his, incontinent by such claime he hath a possession & seisin in the tenements, aswel as if he had entred indeed though he had neuer possession or seisin of ꝑ same lāds or tenements before the said claime. And that the law is such, it is wel proued by a plee of an assise in the booke of Assises, An. 38. Ed. 3. P. 23. the tenor of which ensueth in this forme.

In the County of Dorset before the Iustices it was found by verdict of Assise, that the plaintife which had right by descent of heritage,

tage, to haue the Tenements put in plaint at the time of the death of his auncestor, which was dwelling in the Towne where the tenements were, and by word claimeth the tenements among his neighbors, but for doubt of death he durst not approch vnto ꝯ tenements, bringeth an Assise, & vpon the matter found, it was awarded that he should recouer.

The third thing is, to vnderstand within what time, and by what time ꝯ claime that is said cõtinuall claime shal serue & help him that made the claime & his heire. And as to this it is to wit, that he that hath title to enter, when he will make his claim, if he dare approch vnto the Land, then it behoueth him to goe vnto the land, or to parcell of it, & make his claime: And if he dare not approch vnto the Land for dread of beating, mayming, or death, then it behoueth him to goe, & to approch as nigh as he dare toward the land, or parcell therof, & make his claim. And if his aduersary that occupieth the land die seised in fée, or in fée taile, within a yere & a day after such claime made, by which the tenements descend vnto his Son, as heire vnto him, yet may he that made the claime, enter vpon the possession of the heire. But in this case after the yere & the day ꝯ such claime was made, if none other claime be made, if the father then dy seised the morrow after ꝯ yere & the day, or at another day after &c then may not he ꝯ made the claime enter. And therfore if he ꝯ made the claim will be sure alway that his

entrie shall not be taken away by such descent, it behoueth him within the yeare and the day after the first claime, to make another claime, in the forme aforesaid: And within the yeere & the day after the second claime, to make the 3. claime in the same maner: & within the yeere & the day after the third claime to make another claime &c. that is to say, to make another claim within euery yere & day next after euery claim made during the life of his aduersary, & then at what time that his aduersary die, his entry shall not be taken away by descent. And such claime made in such maner is most commonly taken and called continuall claime of him that made the claime. But yet in case aforesaid, where his aduersary dieth within the yere and the day next after the first claime, this is in the law a continual claime, insomuch that his aduersary died within the yere & the day after the same claime, for it is no need for him that made the claime, to make any other claime, but at what time he will within the same yeere & the day &c. Also if his aduersary be disseised within the yere & day after the claime, & the disseisor dieth therof seised within the yere and the day &c. this dying seised shall not hurt him that made the claime, but that he may enter &c. For whosoeuer he be that died seised within ỹ yere & the day after such claime, that shall not hurt him that made the claime, but that he may enter though there were many dyings seised, and many descents within the yere and the day &c.

Also

Also, if a man be disseised, and the Disseisor die seised within the yeere & the day next after the disseisin done, whereby the tenements discend to his heire, in this case the entry of the disseisee is taken away, for the yeare & the day that should helpe the disseisee in such case &c. shall not be taken from the time of the title of entry grown vnto him, but only frō the time of the claime by him made in maner aforesaid: & for that cause it shall be good for such a disseisee for to make his claime &c. in as short time as he may after the disseisin &c.

Also, if such a disseisor occupy the lād by xx. yeres without any claim made by the disseisee &c. & the disseisee by little space before the death of the disseisor make claime in the forme aforesaid, if so it fortune that within a yere & a day after such claime the disseisor die seised &c. the entrie of the disseisee is congeable, & for this it shalbe good for such a man that made no claime that hath title to enter &c. whē he heareth that his aduersary lieth sick to make his claime &c.

Also, as it is said in the cases put before, where a man hath title to enter because of a disseisin &c. The same Lāw is where a man hath right to enter because of any other title &c.

Also in the said Presidents may yee know my childe two things. One is, where a man hath title to enter vpon any tenaunt in taple, if he make any such claime vnto the land &c. then is the state of the taile defeated, for that claime is as an entre made by him, and is of the same

effect in the law, as if he were vpon the same Tenements, and had entred in the same tenements, as is aforesaid. And then when the tenant in taile immediatly after such claime continueth his occupation in the tenements, this is a disseisin made of the same Tenemẽts vnto him that made the claime, Et sic per consequens, the Tenant then hath fée simple.

The second thing is, that as oft as he that hath right to enter maketh such claime, & this notwithstãding his aduersary continueth his occupation &c. so oft the aduersary doth wrong and disseisin to him that made the claime. And for this cause so oft may he that made the same claime for euery such wrong and disseisin made vnto him, haue a writ of trespas, Quare clausum suũ fregit &c. to recouer his damages &c. or he may haue a writ vpon the statute of king Rich. the 2. made the 5. yere of his raigne, supposing by his writ that his aduersary hath entred into the Lands or tenements of him that made the claime, where his entry was not giuen by the Law &c. & by such action he shall recouer his damages &c. And if the case be such, that the aduersary occupy the tenements with force & armes, or with a multitude of people at the time of such claime &c. Then may he that made ỹ claime, for euery such time haue a writ of forcible entry, & recouer his treble damages

Also here it is to sée, if the seruant of a man that hath title of entry, may by the commandement of his master make continuall claime

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for his Master in his name, & it seemeth that in some cases he might do this, for if he by his commandement come to any parcell of the land and there maketh claime &c. in the name of his Master, this claime is good for his Master. for this that he hath done all that it behoueth his Master to doe in such case &c.

Also if a Master say vnto his seruant that he dare not go into the land, nor into any parcel of the land for to make any claime &c. and dare not approach more nigh vnto ꝑ same land, saue to such a place called Dale, & commandeth his seruãt to go to the same place of Dale, & there to make claime for him &c. if the seruant doe &c. this seemeth as good claime for his master, as if he had been there in his owne person, for that the seruant did all that his Master durst doe, and ought to do by the law in such case.

Also, if a man be so sicke, or so lame that he may not in any manner come to the land, nor to any parcell of the same, or if there be a recluse that he may not because of his order go out of his house &c. if such a manner of person commaund his seruant to goe and make claime for him &c. and the seruãt dare not goe to the land, nor to any parcel thereof for doubt of beating, mayme, or death, and for that cause such seruant commeth as nigh to the Land as he dare for such dread, and maketh his claime &c. for his Master, it seemeth that such claime for his Master, is good and strong in law, for els his Master should bee in too great mischiefe, for

it may well be that such a person that is sicke, or lame, or recluse, cannot find any seruant that dare goe vnto the land, nor to any parcell of it to make the claime for him &c. But if the Master of such a seruãt be in good health and may & dare well to goe to the tenements, or to parcell of it to make his claim for him &c. if such a Master command his seruant to goe to some parcell of the land and make claim for him &c. And when the seruant is going to do the commandement of his Master, hee heareth by the way such things that hee dare not goe to any parcell of the land for to make any claime for his Master, & for that cause he goeth as nigh vnto the Land as he dare for doubt of death, and there he maketh claime for his Master in the name of his Master &c. It seemeth that the doubt in the law in such case shal be if such claime auaile his Master, or not, for this that the seruant did not all that his Master at the time of commandement durst to haue done.

Also some haue said, that where a man is in prison and is disseised, and the disseisor dyeth seised, during the time that the Disseisee is in prison, by which the tenements descended to ỹ heire of the Disseisor, they haue said that this shall not hart the disseisee that is in prison, but that hee may well enter notwithstanding such descent, for this ỹ he may not make continuall claime whõ he was in prison. And also if such a one that is in prison be outlawed in an actiõ of Debt or trespas, or in appeal of robbery &c.

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he shall reuerse such outlawry by writ of Error &c. because he was in prison at the time of the outlawrie against him pronounced.

Also if a recouery be had by default against such a one that is in prison, he shall anoyde the iudgement by a writ of Error for this that he was in prison at the time of such default made &c. and because that such matters of Record shall not hurt them that be in prison, but that it shalbe reuersed &c. a multo fortiori, It seemeth that a matter indeed, that is to say, such descent had when he was in prison shall not hurt him &c. specially for this, that he may not goe out of prison to make continuall claime &c.

And in the same manner it seemeth to them where a man is out of the realme in the kings seruice for busines of the realme, if such a man be disseised when he is in the seruice of ỹ king, that such descent shal not hurt the disseisee, but for this that hee might not make continuall claime &c. it seemeth vnto them, that when he commeth againe into England, hé may enter againe vpon the heire of the disseisor &c. For such a man shall reuerse an outlawry that is pronounced against him during the time that he is in seruice &c. Ergo a multo fortiori, he shal haue aid by the law in the other case &c.

Also others haue said, that if a man bee out of the Realme, though he be not in the Kings seruice, if such a man being out of the Realme be disseised of lands or tenements within the Realme and the disseisor die seised, &c. the disseisee

seisée being out of the Realme, it séemeth vnto them, that when the disseisée commeth into the Realme, that he may well enter vpon the heire of the disseisor &c. and this séemeth vnto them for two causts: One is, that he that is out of the realm, may not haue knowledge of the disseisin made vnto him by vnderstanding of the law, no more then that a thing done out of the Realme may bee tried within this Realme by the oth of xij. men, and to compell such a man to make continuall claime, which by the vnderstanding of the Law can haue no knowledge or Cognisance of such disseisin made or done, this shalbe inconuenient, namely when such a disseisin is done vnto him, when he was out of the Realme, and the dying seised was done when he was out of the realm, for in such case hée may not by possibility after the common presumption make no continuall claime: But otherwise it shal be if the disseisee were within the realme at the time of the disseisin, or at the time of the dying seised of the disseisor &c. An other matter they alledge for a proofe, that before ẏ statute of K. E. the 3. made the 34. yeare of his raigne, by which statute Nonclaime is out &c. the law was such that if a fine were leuied of certain lands or tenements, if any that was a stranger to the fine had right to haue & to recouer the same lands or tenements, if he came not and made his claime therof within a yere and a day next after the fine leuied, he shal be barred for euer, Quia dicebatur quod finis

finem

fine litibus imponebat. And that the law was such, it is proued by the statute of West. the 3. De donis condicionalibus, where it speaketh, if the fine be leuied of tenements giuen in the taile &c. Quod finis ipso iure sit nullus, nec habeant hæredes, aut illi ad quos spectat reuersio (licet plenæ ætatis fuerint, in Anglia, & extra prisonã) necesse apponere clameũ suum. So it is proued, that if a straunger that hath right vnto the tenements, if he were out of the realm at the time of the fine leuied &c. shall haue no damage, though that such fine was matter of record: by greater reason it seemeth vnto him that a disseisin & discent that is matter indeed shal not so grieue him that was disseised when hee was out of the realme at the time of that disseisin, and also at the time that the disseisor died seised &c. but that he may well enter notwithstanding such discent. Also, inquire if a man be disseised, & he arraign an Assise against the disseisor, and the recognitors of the assise chaunte for the plaintife, & the Iust. of Assise will be aduised of their iudgements vntill the next assise &c. & in the mean season the disseisor dieth seised &c. yet the said suit of the assise shal be taken in Lawe for the disseisee a continuall claim, insomuch ỹ no default was in him &c.

Also inquire if an Abbot of a monastery dy, & during the time of vacation, a man wrongfully entreth in certaine parcels of land of the Monastery, claiming the Land vnto him and his heires, and of that estate dyeth seised, and

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the land descendeth vnto his heires, and after that an Abbot is chosen, & made Abbot of the Monastery, a question is, if the Abbot may enter vpon ꝯ heire or not. And it seemeth to some that the Abbot may well enter in this case, for this that the Couent in time of vacation was no person able to make continuall claim, for no more then be they personable to sue an action, no more be they personable to make continual claime, for ꝯ Couent is but a dead body without head, for in time of vacation a grant made vnto them is void, & in this case an Abbot may not haue a writ of Entre vpon disseisin against the heire, for this that he was neuer disseised. And if ꝯ Abbot may not enter in this case, thē he shall be put vnto his writ of Right, ꝯ which shall bee hard for the house. By which it seemeth to thē that the Abbot may well enter &c. Quæras de dubijs, Legem benè discere si vis,
Quærere dat sapere quę sunt legitima vere.

¶ Releases.

RElease be in diuers maners, that is to say: Release of right that a man hath in lands or tenements: & release of actions reals & personals, & of other things. Release of all the right that a man hath in lands or tenements &c. is commonly made in such forme, or to such effect. Nouerint vniuersi per presentes me, A. B. remisisse, relaxasse, & omnino de me & hæredibus meis quietū clamasse E. de D. totum ius, titulum, & clameum meū quæ habui, habeo, vel quouismodo in futur' habere potero,

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de,& in vno meſſuag' cũ pertin' in P. And it is to be vnderſtood, ꝙ theſe words (Remiſiſſe & quiet' clamaſſe) be of ſuch effect as theſe words (Relaxaſſe &c.) And alſo theſe words which be cõmonly put in ſuch deeds of Releaſes &c. that is to be vnderſtood, Quæ quouiſmodo in futurũ habere potero, be as words void in the law, for no right paſſeth by a Releaſe, but the right that the releſſor hath at the time of his releaſe made: For if it be father & ſonne, & the father be diſſeiſed, & the ſon liuing his father releſeth by his deed to the diſſeiſor all the right that he hath, or may haue in the ſame tenemẽts, without clauſe of warrantize &c. and after the Father dyeth, the ſonne may lawfully enter vpon the poſſeſſiõ of the diſſeiſor, for this that he had no right in the land liuing his father, but the right deſcended vnto him by deſcent after the releaſe made by the death of his father. Alſo in a releaſe of all the right that a man hath in certaine lands, it behoueth vnto him to whom the releaſe is made in ſuch caſe, that he hath a freehold in the lands in deed, or in the law, at the time of the releaſe made, for in euery caſe where he to whom the releaſe is made hath a freehold in deed, or in law at the time of the releaſe made &c. the releaſe is good. Franktenement in law is, as if a man haue diſſeiſed another, & therof dieth ſeiſed, by the which ꝙ tenements deſcend vnto his ſon, howbeit that his ſonne enter not in the tenements, yet he hath a franktenement in the law, which by force of

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the deſcent is caſt vpon him, and therefore the releaſe made is good enough. And if he take a wife ſo being ſeiſed in the law, howbeit that he neuer enter indeed, & dieth, his wife ſhall haue thereof her dower. And in ſuch caſe of releaſe of all his right, howbeit that he to whome the releas is made, ne hath any thing in the franktenement, neither indeed nor in law, yet the releas is good enough. As if the diſſeiſor haue let land that hee had by diſſeiſin to another for terme of his life, ſauing the reuerſion to him, if the diſſeiſee or his heires releaſe vnto the diſſeiſor all the right &c. that releaſe is good, for that that he to whom ꝑ releas is made, had in him a reuerſiõ at the time of the releas made. In the ſame maner if a leas be made to a man for terme of life, the remainder vnto another for terme of life, the remainder vnto the third in taile, the remainder vnto the fourth in fee, if a ſtranger that hath the right vnto the land releas all his right vnto any of them in the remainder, ſuch releas is good, for this that euery of them hath a remainder veſted in himſelfe: yet if the tenant for terme of life be diſſeiſed, & after he that hath right (the poſſeſſion being in the diſſeiſor) releas vnto one of them to whom the remainder was made, all his right &c. that releaſe is voyde, for that that he ne had in him no remainder indeed, but all onely a right of a remainder at the time of the releaſe made.

And note, that euery releas made to him ꝑ hath a reuerſion or remainder in deede, ſhall

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ſerue & help them that haue the franktenemẽt, aſwell as them to whom the releaſe is made, if the tenant haue the releaſe in his hand &c.

In the ſame maner a releas made to a tenãt for terme of life, or to a tenant in the taile, ſhall enure vnto them in the reuerſion, or to them in the remainder, as well as to the tenant of the Franktenement, & they ſhal haue as great aduantage of that, if that they may ſhew it.

And if there be lord and tenant, & the tenant is diſſeiſed, and the Lord releaſeth vnto the diſſeiſee all the right that he hath in the ſeignorie, or in the land, that releaſe is good, and the ſeignory is extinct. And if the goods of the diſſeiſee be taken, and of them the diſſeiſee ſueth a Replegiare againſt the lord, he ſhal compel the lord to auow vpon him, & if he will auow vpon the diſſeiſor, then vpon the matter ſhewed, the auowry ſhall be abated, for the diſſeiſee is Tenant to him in right and Law.

Alſo if Land be giuen to a man in the taile, reſeruing vnto the donor & his heirs a certain rent, if the donee be diſſeiſed, & after the donor releaſeth to the donee all the right that he hath in the land, and after the donee entreth into the land vpon the diſſeiſor: in this caſe the rent is gone, for this that the Diſſeiſee at the time of the releaſe made was tenant in right, & in law vnto the donor, and the auowrie of fine force ought to be made vpon him by the donor of the rent behind &c. But yet nothing of the right of the Land, that is to ſay, of the reuerſion ſhall

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paſſe by ſuch releaſe for this that the Donée to whom the releas was made then had nothing in the land but only a right, & ſo the right of the land may not paſſe by ſuch releas to the donée.

In the ſame maner it is, if a Leaſe be made to one for terme of life, reſeruing to the Leſſor and to his heires certaine rent, if the leſſee be diſſeiſed, & after the leſſor releaſeth to the leſſee and to his heires, and after the leſſee entreth, howbeit that in this caſe the rēt is extinct, yet nothing of the right palleth &c. Cauſa qua ſupra. But if it bee very Lord and very tenant, and the tenant maketh a feoffement in fée, the which feoffée neuer became tenant to the lord &c. if the Lord releas to the feoffor all his right &c. that releaſe is void, for this that the feoffor hath no right in the Land, and he is no tenant in right to the Lord, but only tenant as for the auowry to be made, and he ſhal neuer compell the Lord to auow vpon him, for the Lord may auow vpon the feoffée if he will. Otherwiſe it is where the very tenāt is diſſeiſed, as in caſe aforeſaid, for if the very tenant that is diſſeiſed holdeth of the lord by knights ſeruice & dieth, his heire being within age, the Lord ſhal haue and ſeiſe the ward of the heire. And ſo he ſhall not haue the ward of the feoffor that made the feoffement in Fée, and ſo it is a great diuerſity betweene the two caſes.

Alſo, if a man enfeoffe another in his Land vpon truſt, and to the intent that hee ſhall performe his laſt will, and the feoffour occupieth

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the same at the will of his Feoffées, and after the feoffées release by their deed vnto the feoffour all the right &c. This hath ben in question if such leale be good, or not, and some haue said that such release is voyd, for this that no priuity was betweene the feoffées and their Feoffour, insomuch that no Lease was made after such feoffement by the feoffées and their feoffour, to hold at their will &c. and some haue said the contrary, & that for two causes. One is, that when such feoffements are made vpon confidence, to performe the will of the feoffor, that it shall be vnderstood by the law, that the feoffour by and by ought to occupy the land at the will of his feoffées, and so it is such maner of priuity betweene them, as if a man make a feoffement to other persons, and they incontinent vpon the feoffement will say & grant that the feoffour shall occupy the land at their will &c. An other cause they alleadge, that if such land be worth xl.s. by yere &c. Then such feoffor shalbe sworne in Assises, and in other Inquests, in plées reals, and also in plées personals, of what great summes soener that the plaintifes will declare &c. And this is by the Common Law of the land: Ergo this is for a great cause, and the cause is that the Law will that such feoffors and their heires ought to occupy &c. And to take thereof the rent & all the profits, and all maner of issues and reuenues &c. as though the tenements were their owne without interruptiõ of ỹ feoffées, notwithstã-

ding such feoffements, Ergo the same law giueth a priuity betweene such feoffors, and their feoffées vpon confidence &c. For which causes they haue said, that the Releas made by such feoffées vpon confidence to the feoffor, or to his heires &c. so occupying the land &c. shall be good enough &c. And this is the better opinion as it seemeth, Quære since the statute 27. H. 8. cap. 10. Also Releases after the matter in deed sometime haue their effect by force to enlarge the estate of them to whom the release is made: As if I let certaine Land to a man for terme of yeres, by force whereof he is possessed, and I release vnto him all the right that I haue in the land without more words set or put in the deed, and deliuer vnto him the deed: Then hee hath estate but for terme of his life, and the cause is for this, that when the Reuersion or the remainder is in a man, the which will inlarge by his releas the estate of the tenant &c he shall haue no greater estate but in the manner and forme as if such a Lessour were seised in Fee, and will by his deede make estate to one in a certaine forme &c. and deliuer vnto him seisin by force of the same deed, if in such deed of Feoffement there bee no word of inheritance &c. Then he hath estate but for terme of life &c and so it is in such Releas made by him in the Reuersion, or in the remainder: For if I let land to a man for terme of life, and after I release vnto him all my right without more saying in the re-

leas, his estate is not inlarged. But if I release vnto him & to his heires of his body engendred, then he hath fée taile. And if I releas vnto him & to his heires, then hath he fée simple. So it behoueth in such case to specifie in the deed, what estate he to whom the releas is made shal haue &c. And sometime a releas shal enure to set and put the right of him that maketh the releas to him to whome the releas is made: As a man is disseised, and he releaseth vnto the Disseisor all the right that hee hath: In this case the disseisor hath his right, so that where his estate before was wrong, now by the release it is lawful & right. But note well, that when a man is seised in fée simple of any lands or tenements, and another will release vnto him all the right that he hath in the same tenements, it needeth not to speak of the heires of him to whom the release is made, for this that he had fée simple at the time of the release made: for if the releas were made to him and to his heires for one day, or for one houre, this shall bee as strong vnto him in the Law, as he had released to him and to his heires, for when his right was gone from him at one time by his releas without any condition &c. to him that had fée simple, it is gone for euer. But where a man hath a reuersion or a remainder in fée simple at the time of the releas made, there if hee will release to the Tenaunt for terme of yeares, or for terme of life, or in the taile, it behoueth to determine the estate

that he to whom the releaſe is made ſhal haue by force of the ſame releas: For this that ſuch releas goeth to inlarge the eſtate &c. of him to whom the releas is made: But otherwiſe it is where a man hath but a right vnto the land & had nothing in ꝑ reuerſion nor in the remainder indeed: for if ſuch a man releas al his right to one that is tenaunt of the franketenement, all his right is gone, though that no mentiō be made of the heires of him to whom the releas is made. For if I let land to a man for term of life, if I after releas vnto him for to enlarge his eſtate, either it behoueth that I releas vnto him, & to his heires of his body ingendred, or to him and to his heires males of his body begotten, or by ſuch ſemblable eſtate &c. or otherwiſe he hath no greater eſtate then he had before. But if my tenant for terme of life let the ſame land out to another for terme of the life of his Leſſee, the remainder to another in fee, now if I releas vnto him vnto whome my tenāt letted for terme of life, I ſhalbe barred for euer though that no mention bee made of his heires, for this that at the time of the releaſe made I had no reuerſion but onely a right to haue the reuerſion: For by ſuch a leas with a remainder ouer that my tenant made, in this caſe my reuerſion is diſcontinued, and ſuch releas ſhall enure vnto him in the remainder to haue aduātage of this, aſwell as to the tenant for term of life, for to that intent the tenant for term of life, and he in the remainder be as one

tenant

tenāt in the law, & be as if one tenāt were sole seised in his demesne as of fee at ꝑ time of such release made vnto him. Also if a man be disseised by two, if he releas vnto one of thē, he shall hold his fellow out of the lād, & by such release shall sole haue possessiō & estate in the lād. But if one disseisor in feoffe two in fee, & the disseisée release to one of them, this shall inure to both the said feoffées. And the cause of the diuersity betweēn these two causes, is apparāt inough.

Also, if I be disseised, & the disseisor is disseised, if I release to the Disseisor of my disseisor my Disseisor shall neuer haue Assise nor enter vpon his Disseisor, for this that his Disseisor hath my right by my release &c. And so it seēmeth in this case, that if there were xx. disseisors ech after other, & I release to the last disseisor, he shall bar all the other of their actions & their title. And the cause is, as it seēmeth, for this, ꝑ in many cases whē a mā hath a lawfull title to enter, though he enter not &c. he shal defeat all mean titles by his release &c. But this is not in euery case, as shalbe said afterward.

Also, if a man be disseised, the which hath a sonne within age, and dyeth, & being the sonne within age, the disseisor dieth seised, & the land descendeth to the heire, and a straunger abateth, and after the sonne of the disseisée when he commeth vnto ful age releaseth all his right &c. to the abatour: In this case the heire of the disseisor shall haue no Assise of Mortdaunceſter against the abator, but he shall be barred of the

Assise, for this that the abator hath the right of the son of the Disseisée by his releas, & the entrie of the son was lawfull &c. for this that he was within age at the time of the descent &c. But if a mã be disseised, & the disseisor maketh a feoffement vpon condition, ꝑ is to say, to yeeld vnto him certaine rent, & for default of payment a reentry &c. if the disseisée releas to the feoffée vpon condition, yet this amendeth not the estate of the feoffée vpon condition, for notwithstãding such release, yet his estate is vpon condition as it was before. In the same maner it is where a mã is disseised of certaine land, & the disseisor granteth a rent charge out of the same land, though that after the disseisée releaseth vnto ꝑ disseisor &c. yet the rẽt charge abideth in his force: And the cause is in these two cases, that a man shall haue none aduantage by such release that shall bee against his owne proper acceptance, & against his owne grant. And though that some haue said, that where the entry of a man is congeable vpon a tenãt, if he releas to the same tenant, that this auaileth vpon the tenant, so as he had entred vpon the tenant & after infeoffed him, &c. this is not true in euery case, for in the first case of these two cases, if the disseisée in fee enter vpõ the feoffée vpõ condition, & after infeoffeth him then the condition is all put aside & void. And in the secõd case if the disseisée enter & infeoffe him that granted the rent charge, then is the rent charge auoyded. But it is not auoyded

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by any such releas without entrie made &c.

Also, if a man be disseised by a child within age, ỹ which alieneth in fee, & the alienee dyeth seised, & his heire entreth (being the disseisor within age) Now it is in ỹ election of the disseisor to haue a writ of Dū fuit infra ætatē, or a writ of Right against the heire of the alienee, & which writ soeuer he taketh of them, he ought to recouer by the Law. And also he may enter into the land without any recouerie, & in this case the entry of the disseisee is takē away: but in this case if the disseisee release his right to the heire of the alienee, and after the disseisor bringeth a writ of Right against the heire of the alienee, & he ioyneth the mise vpō the cleere right &c. the grand Assise ought by the law to find that the tenant hath more cleere right &c. thē hath the disseisor, for this that the tenaunt hath ỹ right of ỹ disseisee, by his releas, which is more ancient and more cleere right then the right of the disseisor, for by such releas, all the right of the disseisee passeth vnto the tenant, & is in the tenant. And to this some haue said, that in such case where a man hath right to lands or tenements (but his entry is not lawfull) if he releas vnto the tenant &c. then such releas shall enure by way of extinguishment. And vnto this it may bee sayd, that this is truth vnto him that releaseth, for by his releas hee hath dismissed himselfe cleane of his right as to his perſō: But yet the right that he had may well passe and go vnto the tenant by his

releas, for it ſhould be inconuenient ỹ ſuch an anciẽt right ſhould be extinct all vtterly &c. for it is commonly ſaid, ỹ right may not dye. But a releas that goeth by ỹ way of extinguiſhmẽt againſt all perſõs, is where he to whõ the releas is made, may not haue this ỹ vnto him is releaſed. As if there be lord & tenant, & the lord releaſeth vnto the tenãt all the right ỹ he hath in the lordſhip, or all the right ỹ he hath in the Land &c. ſuch a releas goeth by way of extinguiſhmẽt againſt all perſons, for this ỹ the tenant may not haue the ſame of himſelfe. In the ſame maner is a releas made to ỹ tenant of the land of a rent charge, or of a cõmon of paſture, for this that the tenãt may not haue that that vnto him is releaſed &c. So ſuch releaſes goe away by extinguiſhment againſt all perſons.

Alſo, to proue ỹ the grand aſſiſe ought to paſſe for the demandant in the caſe aforeſaid, I haue heard often in the lecture vpõ the ſtat. of weſt. the 2. that beginneth, In caſu quãdo vir amiſerit per defaltam tenem'tũ qd' ſuit ius uxoris ſuæ &c. that at the cõmon law before that ſtatute, if a leas were made to a tenãt for terme of life, the remainder ouer in fee, & a ſtrãger by a fained action recouer againſt the tenãt for terme of life by default, & after the tenant dieth, he in the remainder hath no remedie before the ſtatute, for this that hee had no poſſeſſion of the land, but if he in the remainder had entred vpon the tenant for terme of life, & diſſeiſed him, and after the tenant entreth vpon him, & after

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the tenant for terme of life leaſeth by ſuch recouery, had by default, and dyeth: now he in the remainder may well haue a writ of Right againſt him that recouered, for this that ꝯ miſe ſhalbe ioyned only vpon ꝯ cleare right. And yet in this caſe the ſeiſin of him in the remainder was defeated by the entric of the tenaunt for terme of life. But peraduenture ſome will argue & ſay, that he ſhall haue no writ of right in this caſe, for this that whē the miſe is ioyned in ſuch maner, that is to ſay, if the tenāt haue more cleare right to the land in the manner as it is holden, then the demaundant hath in the maner as he demandeth. And for this that the ſeiſin of the demaundant was defeated by the entry of the tenāt for term of life, then he hath no right in the maner as he demandeth. Vnto this it may be ſaid, that thoſe words of (Modo & forma prout &c.) in many caſes be wordes of the manner of pleading, & no words of ſubſtance: For if a man bring a writ of Entre (In caſu prouiſo) of alienation made by the tenant in Dower to his diſinheritance, and pleadeth of the alienation made in fee, & the tenant ſaith that hee alened not in the manner as the demandant hath declared, and vpon this they be at iſſue, and it is found by verdict that the tenaunt alened in the tayle, or for terme of an others life, the demandant ſhall recouer, and yet the alienatiō was not in the maner as the demandant hath declared.

Alſo, if there be Lord and Tenant, and the tenant

tenant holdeth of the lord by fealty onely, & the lord diſtraineth the tenãt for rent, & the tenãt bringeth a writ of treſpaſſe againſt his L. for his cattel ſo taken, & the lord pleadeth that the tenãt holdeth of him by fealty & certain rent, & for ꝑ rent behind he came to diſtrain &c. & demandeth iudgemẽt of ꝑ writ brought againſt him, Quare, vi & armis &c. And the other ſaith that he holdeth not of him in the maner as hee ſuppoſeth, & vpon this they be now at iſſue, & it is found by verdict that he holdeth of him by fealty tantũ In this caſe the writ ſhall abate, and yet he held not of the lord in the maner as the lord hath ſaid, for the matter of ꝑ iſſue is, whether the tenant holdeth of him or not: For if hee hold of him, though the Lord diſtraine for other ſeruices that he ought not haue, yet ſuch a writ of treſpas, Quare, vi & armis, &c. lyeth not againſt the Lord but ſhall abate.

Alſo, in a writ of treſpaſſe of beating, or of goods taken, if the defendant plead not culpable in the maner as the plaintife ſuppoſeth, & it is found that the defendant is culpable in another Towne, or at another day then the plaintife ſuppoſeth, yet he ſhall recouer: And in many mo other caſes theſe words, that is to ſay, in the manner as the demandant or the plaintife hath ſuppoſed, bee no matter of ſubſtãce of the iſſue: for in a writ of right where the miſe is ioyned vpon the cleere right, it is as much to ſay, & to ſuch effect, that is to wit, whether hath the more right the tenaunt or

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the demandant to the thing ſo demanded &c.

Alſo, if a man be diſſeiſed, & the diſſeiſor dieth ſeiſed &c. and his ſon & heire is in by deſcent, & the diſſeiſee entreth vpō the heire of the diſſeiſor, the which entry is a diſſeiſin &c. if the heire bring an aſſiſe, or a writ of Right againſt the Diſſeiſee, he ſhall bee barred: For this that when the graund aſſiſe is ſworne, their oath is vpon the cleere right, and not vpon the poſſeſſion &c. for if the heire of the Diſſeiſor had brought an Aſſiſe of Nouel diſſeiſin, or a writ of Entre in nature of aſſiſe, & recouered againſt the Diſſeiſee, & ſued execution, yet may the diſſeiſee haue a writ of Entre in the Per againſt him of the diſſeiſin made vnto him by his Father, or he may haue againſt the heire a writ of Right: But if the heire ought to recouer againſt the diſſeiſee in ỹ caſe aforeſaid by a writ of right, then all his right ſhalbe cleerely gone for this ỹ a finall iudgement ſhould bee giuen, againſt him, which ſhould bee againſt reaſon where the diſſeiſee hath more cleere right &c.

And know ye my ſon, ỹ in a writ of Right after this that the foure Knights be choſen in the graund Aſſiſe then there is no greater delay then in a writ of Formedon, after this that the parties be at iſſue, &c. And if the myſe bee ioyned vpon battaile, then there is leſſe delay.

Alſo, a releaſe of all the right &c. in ſome caſe is good, made vnto him that is ſuppoſed tenant in the law, though he haue nothing in the tenements, as in a Præcipe quod reddat,

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if the tenaunt alien the land hanging the writ, & after the demandant releaseth to him all his right, that release is good, for this that hee is supposed to be tenant by the suit of the demandant, & yet he hath nothing in the Land at the time of the release made. In the same maner it is, if in a Præcipe qd' reddat the Tenant vouch, & the vouchee enter into the garranty, if after the demaundant release to the vouchee all his right &c. this is good ynough, for this that the vouchee after this that he hath entred into the garranty, is tenant in law to the demandant.

Also, as to releases of actions reals, and actions personals, it is so, that some actions be mixt in the realty and in the personalty, as if an action of wast be sued against the Tenant for terme of life, this Action is in the realty, for this that the place wasted shall bee recouered. And also it is in the personalty, for this that the treble damage shalbe recouered for the wrong and wast done by the tenant, & for this in this Action a release of actions reals is a good plee in barre, and so is a release of actions personals. In the same maner it is in Assise of Nouel disseisin, for this that it is mixt in the realty and in the personalty. But if such assise be arraigned against the disseisor, the tenant of the Disseisor may plead a releas of all actions personals for to barre the Assise, but not a releas of actions reals, for none shall plead a releas of actiõs reals in assise, but the tenãts &c.

Also in such Actions that ought to bee sued against

againſt the tenant of the franktenement, if the tenant haue a releas of all actions reals of the demaundant made vnto him before the writ purchaſed, & he pleadeth it, this is a good plée for the demandent to ſay that he that pleadeth that plée had nothing in the franktenement at the time of the releas made, for that he had no cauſe to haue action reall againſt him.

Alſo, in ſuch caſe where a man may enter in lands or tenements, & may alſo haue of this an action reall which is giuen vnto him by the law againſt the tenant; if in this caſe the demandant releaſeth to the tenant all maner action reals, yet this taketh not away the entrie of the demaundant, but the demaundant may well enter, notwithſtanding ſuch reals, for this that nothing is releaſed but the action &c. In the ſame manner it is of things perſonals: As if a man wrongfully take my goods, if I reals vnto him all actions perſonals, yet I may by the Law take my goods out of his poſſeſſion.

Alſo, if I haue cauſe to haue a writ of Detinue of my goods againſt another, though that I releas vnto him all actions perſonals, yet I may take my goods out of his poſſeſſion, for this that no right of goods is releaſed vnto him but onely the action &c. Alſo, if a man be diſſeiſed, and the Diſſeiſor maketh a Feoffement vnto diuers perſons to his vſe, and the Diſſeiſour continually taketh the profites &c. and the diſſeiſée releaſeth vnto him all actions reals,

reals, and after he sueth against him a writ of Entre in nature of assise, because of the statute, for this that he taketh the profits: Inquire how the Disseisour shall be holpen by the said releas, for if he will plead the release generally, then the demandant may say that he had nothing in the franktenement at the time of the release made, and if he plead the release specially, then it behoueth him to knowledge a disseisin, and then may the demaundant enter in the land &c. by his comisance of the disseisin &c. But peraduenture by special pleading he may be barred of the action that he sueth &c. though that the demandant may enter &c.

Also if a man sue Appeall of Felony of the death of his ancestor against an other, though the appellāt releas vnto the defendant all maner actions reall and personall, this shall not helpe the defendant, for this, that this appeall is not an action real, insomuch that the appellant shall not recouer any realty, nor such Appeall is no action personall, insomuch that the wrong was vnto his Auncestour and vnto him: but if he releas to the defendant all manner of Actions, then it shall bee a good barre in appeale. And so a man may see that a releas of all maner of actions, is better then a releas of actions reall and personall &c.

Also, in appeal of Robbery, if the defendant will plead a releas of the appellant of all actions personall, this seemeth no plee, for an action of appeall where the appellant shall haue

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iudgement of death &c. is more high then an action perſonall, and it is not properly ſaid an action perſonall, and therefore if the defendant will haue the releas of the appellant to barre him of the Appeale, it behoueth him to haue a releaſe of all maner of Appeales, or a Releas of all maner of actions, as it ſeemeth &c. But in Appeall of Mathem, a releas of all maner of actions perſonall is a good plea in barre, for this, that in ſuch an action he ſhall recouer but damages.

Alſo if a man be outlawed in an action perſonall by proces of the originall, & bring a writ of Error, if hee at whoſe ſuit he was outlawed will plead againſt him a releas of actions perſonall, this ſeemeth no plea, for by the ſaid action he ſhall recouer nothing in the perſonalty, but all onely to reuerſe the outlawry: But a releas of a writ of Error ſhall be good plée &c.

Alſo, if a man recouer debt or damage, & he releas to the defendant all manner of actions, yet hee may lawfully ſue execution by Capias ad ſatisfaciendū, or by Elegit, or by Fieri facias, for execution by ſuch writs may not bee ſaid an Action, but if after a yeare and a day the plaintife will ſue a Scire facias to haue execution &c. then it ſeemeth a releas of all actions ſhall be a good plea in barre: But ſome haue thought the contrarie, inſomuch that the writ of Scire facias is a writ of execution, and is to haue execution. But inſomuch that vpon the ſame writ ꝯ defendant may plead diuers matters

ters after the iudgemēt giuen to put him from execution, as vtlawry, & diuers other &c. therfore it may well be ſaid actiō &c and I trow þ in a Scire facias out of a fine, a releas of al maner of actiōs is a good plea in bar, but where a mā hath recouered det or damage, & it is accorded betweene them, that the plaintife ſhall not ſue execution, then it behoueth þ the plaintife make a releas to him of all maner executions.

Alſo if a man releas to another all manner demaunds, this is the moſt beſt releas that he to whom the releas is made can haue, & moſt ſhall enure to his aduātage, for by ſuch releas of all maner of demands, all maner of actions reals & perſonals, and actions of appeales be gone and extinct, and all maner of executions be good & extinct: and if a man hath title to enter in any lands or tenements, by ſuch releas his title is gone. And if a man haue rent ſeruice, or rent charge, or common of paſture &c. by ſuch releas of all maner demands to the tenant of the land, whereof the ſeruice, or the rent is going out, or in what land ſoeuer the common be, the ſeruice and rent, and the common is gone and extinct &c.

Alſo, if a man releas to another all maner quarrels, or all controuerſies or debates betweene them, Inquire to what matter, and to what effect ſuch words doe extend.

Alſo if a man be bound by his déd to another in a certain ſumme of money to pay at the feaſt of S. Mich. then next following &c. if the obligé

obligé before the ſaid feaſt releas to the obligor all actions, hé ſhall be barred of the dutie for euer, & yet he might haue no action at the time of the releas made. But if a man let land to another for terme of yeares, to yéld at the feaſt of S. Mich. next enſuing xl. s. & before the ſame feaſt hee releaſeth to the leſſée all actions, yet after the ſame feaſt he ſhall haue an action of debt for the not payment of the xl. s. notwithſtanding the ſaid releas. Studie the cauſe of the diuerſity betwéene theſe 2. caſes.

Alſo, where a man will ſue a writ of right, it behoueth ỹ hee plead of the ſeiſin of himſelfe or of his Anceſtors, & alſo ỹ the ſeiſin was in time of the ſame king, as he pleadeth in his pléa, for this is an auncient law vſed, as it appeareth by report of a certaine pléa, in ſuch forme as inſueth Sir J. Barrey brought a writ of right againſt Rainold Aſhlington, & demanded certain tenements &c. the miſe was ioyned in the banke, & the originall & the proces were ſent before Juſt. errants, where the parties came, & the xij. knights were ſworne, without challenge of the parties to be allowed, for this ỹ the election was made by aſſent of the parties, with the 4. knights, & the oath was ſuch: That I ſhall ſay truth &c. whether R. of I. haue more right to hold the tenemẽts that J. Barrey demãded againſt him by his writ of right, or John to haue ỹ tenements as he demandeth, & for nothing to let to ſay the trueth, as God mé helpe &c. without ſaying to their

knowledge, & such oth shalbe made in attaint, and in battaile & in waging of Law, for those do bring euery thing vnto an end: But I.B. pleaded of ꝑ disseisin of one Wake his auncester in the time of K. H. & Rainold vpō ꝑ mise toyned tendred halfe a mark for the time &c. & vpon this Herle Iustice said to th' grād assise, after ꝑ they were charged vpon the clere right: Goodmen, Rainold gaue halfe a marke to the king for that time, to the intent that if ye find ꝑ the auncester of I. was not seised in the same that the demandant hath pleaded, you shall inquire no further vpon the right, and for this ye shal say to vs whether the ancester of I. Wake by name, was seised in the time of king Henry as he hath pleaded or not: & if ye find that he was not seised in the time, ye shall inquire no more, & if ye find ꝑ he was seised, then inquire further of the right: and after the grand assise came with their verdict & said that Wake was not seised in the time of king Henry, wherby it was awarded that Rainold should hold the tenements against him demanded to him and to his heires quite of I. Barrey & his heires, to the remnant, and John in the mercy.

Confirmation.

A Deed of confirmation is most commonly in such forme, or to such effect Nouerint vniuersi &c. me A. de B. ratificasse, approbas. & confirmas. C. de D. statū & possessionē quos habeo, de, & in vno messuag. cū pertin' in N. &c. And in some case a deed of confirmatiō is good & vail-

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able, where, in the same case, a deed of releas is not good nor vailable. As If let land to a man for termof his life, the which letteth the same land to another for xl. yeares, by force of the which he is possessed, if I by my deed confirm the state of the tenant for terme of yeres, & the tenant for terme of life dieth during the terme of yeres, I may not enter in the Land during ỹ same term, yet if I by my deed of releas haue released to the tenant for terme of yeres in the life of the tenãt for term of life, the releas shall be void, for this, that then no priuity was betweẽ me & the tenant for terme of yeres, for a releas is not auailable to the tenant for terme of yeres, but where a priuity is betweẽ him & him that releaseth. In the same maner it is if I be disseised, & the disseisor maketh a lease to another for terme of yeres, if I releas vnto the termor, ỹ is void: but if I cõfirm the estate of the termor, that is good & effectuall. Also, if I be disseised, & I confirme the state of the disseisor, thẽ he hath a good & rightful estate in fee simple, though that in the deed of confirmation no mention is made of his heires, for this that he had fee simple at ỹ time of the confirmatiõ: for in such case if the disseisee confirm the state of ỹ disseisor, to haue & to hold to him for terme of his life, yet the disseisor hath fee simple, & is seised in his demeſn as of fee, for this that whẽ his estate was cõfirmed, he hath fee simple, & in such deed he may not chãge his estate without entry vpõ him &c. In the same maner it is, if ỹ

eſtate be cõfirmed for term of a day, or for term of an houre, he hath a good eſtate in fée ſimple, for this, that his eſtate in fée ſimple was once cõfirmed, for cõfirmare, idẽ eſt qd' firmũ facere.

Alſo, if 2. be diſſeiſors, & the diſſeiſée releaſeth to the one, hée ſhall hold his fellow out of the land: But if the diſſeiſée cõfirme the eſtate of one without more ſpeech in the déed, ſome ſay, that he ſhal not hold his fellow out, but he ſhall hold ioyntly with him, for this, ỹ nothing was confirmed but his eſtate that was ioynt: & for this ſome haue ſaid, that if 2. ioyntenants be, & the one confirmeth the eſtate of the other, that he hath but a ioynteſtate as he had before. But if he haue ſuch words in the déed of cõfirmation, to haue & to hold to him & to his heires all the tenemẽts whereof mention is made in the confirmation then he hath eſtate ſole in the tenemẽts, & therfore it is a good & a ſure thing in euery cõfirmatiõ, to haue theſe words, to haue & to hold the tenements &c. in fée, or in fée taile, or for terme of life, or for terme of yeares after or as the cauſe or matter is: for to th' intent of ſome, if a man let land to another for terme of life, and after he confirmeth his eſtate by theſe words, to haue & to hold his eſtate to him & to his heires, this confirmation as concerning his heires is voyd, for his heires cannot haue his eſtate which was but for terme of life, but if he cõfirme his eſtate by theſe words, to haue the ſame land to him & to his heires, this confirmatiõ maketh fée ſimple in this caſe to him

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in the land, for this, that these words, to haue & to hold &c. goeth to the land, & not to the estate that he hath &c. Also, if I let certaine land to a woman sole for terme of her life, the which taketh a husbād, & after I confirme the estate to the husband & to the wife for term of their two liues, in this case ꝑ husbād holdeth not ioyntly with the wife, but holdeth in the right of his wife for term of his life: but this confirmation shal enure to the husbād by way of remainder for term of his life, if he suruiue his wife. But if I let land to a womā sole for term of yeres, which taketh a husband, & after I cōfirme the estate to the husband & the wife, for terme of both their liues, in this case they haue ioynt estate in the franktenement of the land. for this that the wife had no franktenement before.

Also, if a ꝑson of a church charge the glebe of his Church by his dēd, & the ꝑatron & the Ordinary confirme the same grāt, & all this is cōprised within the same grant, ꝑ same grant shall be in his strength after the purpose of the same graunt: but in such case it behoueth that the patron haue fēe simple in the aduowlō, for if he haue estate in ꝑ aduowson for term of life or in taile, thē the grant shall stand but during his life, & the life of the parson ꝑ granted it &c.

Also, if a man let land for term of life, which tenant for terme of life chargeth the land with a rent in fēe, and he in the reuerliō confirmeth the same graunt, this charge is good inough & effectual. And if there be a perpetuall Chātry,

whereof the Ordinary hath nothing to meddle nor to do, the patron of the chãtry, & the chaplain of the same chãtry may charge the chãtry with a rent charge in perpetuity. Also in some case these verbs Dedi & cõcessi, haue the same effect in substãce, & shal enure to the same intẽt as this verb cõfirmaui: as if I be disseised of a plough land, & after I make such a deed &c. Sciant prẽsentes &c qd' dedi to ꝑ disseisor the said plough land &c. And if I deliuer only the deed to him without liuery of seisin of the land, that is a good cõfirmatiõ, & as strong in the law, as if he had in the deed this verb Confirmaui &c. Also, if I let lãd to a man for term of yeres, by force of which he is possessed, & after I make him a deed &c. Qd' dedi, vel cõcessi &c. the same land, to haue for term of his life, & deliuer him the deed, then by & by he hath estate in the land for term of his life, if I say in ꝑ deed, to haue to him & to his heires of his body ingendred, he hath estate in the taile, & if I say in the deed, to haue & to hold to him & to his heires, he hath estate in fee simple, for this shal enure to him by force of cõfirmation to inlarge his estate. Also if a man be disseised, & the disseisor dieth seised, & his heire in by discent, after the disseisee & the heir of ꝑ disseisor make iointly a deed to another in fee, & liuery of seisin vpõ this is made, as to the heire of the disseisor that insealeth the deed, the tenemẽts passe by the same deed by way of fesfemẽt, & as to ꝑ disseisee ꝑ insealeth the same deed, this shall not enure but by ꝑ way of confirma-

firmatiõ. But if the diſſeiſée in this caſe bring a writ of Entrie in the (Per & Cui) againſt the alienée of the heire of the diſſeiſor, inquire how hee ſhall plead the déed againſt the demandant by way of cõfirmation &c. And know this my child, that it is one of the moſt honorable, laudable, & profitable things in our Law, to haue the ſcience of well pleading, in actions reall & perſonall, and for this I counſaile thée, eſpecially to ſet thy courage & care to learne that.

Alſo, if there be lord and tenant, & the Lord confirmeth the eſtate that the Tenant hath in the tenements, yet the ſeigniory wholy abideth to the Lord as it was before. In the ſame maner it is if a mã haue a rent charge out of certain land, and he confirmeth the ſtate that the tenant hath in the land, yet abideth to the confirmor the rent charge. In the ſame maner it is if a man haue cõmon of paſture in the land of any other, if hée confirme the ſtate of the tenant of the land, nothing ſhal depart from him of his common, but this notwithſtanding the common abideth to him as it was before.

But if there be Lord and tenant, which holdeth of his Lord by ſeruice of fealty, & xx. ſ. of rent, if the lord by his déed confirme the eſtate of the tenant to hold by xij. d. ob. q. or by an ob. in this caſe the Tenaunt is diſcharged of all other ſeruices, and ſhall yeld nothing to the Lord, but that that is compriſed within the ſame confirmation, yet if the Lord will by the déed of confirmation, that the tenant in this

caſe ought to yéld to him a Hauke, or a Roſe yearely at ſuch a feaſt &c. this reſeruation is voyd, for this that he reſeruеth to him a new thing that neuer was parcell of the ſeruices before the confirmation, and ſo the Lord may abridge the ſeruices by ſuch confirmation, but he may not reſerue to him a new ſeruice &c.

Alſo, if there be Lord, Meſne, & tenant, & the tenant is an Abbot that holdeth of the meſne, by certaine ſeruices yéarely, the which hath no cauſe to haue acquitãce againſt his meſne for to bring a writ of Meſne &c. in this caſe if the meſne confirme the eſtate that the Abbot hath in the land, to haue and to hold the land vnto him & his ſucceſſors in frankalmoigne, or frée almes &c. in this caſe this confirmatiõ is good, & then the Abbot holdeth of the meſne in frãkalmoigne: & the cauſe is for this, ỹ no new ſeruice is reſerued, for all ỹ ſeruices ſpeciall ſpecified be extinct, & nothing is reſerued to the meſne, but the Abbot ſhal hold the land of him as it was before the confirmation, for he that holdeth in frãkalmoigne ought to do no bodily ſeruice, ſo that by ſuch cõfirmatiõ it appeareth that the meſne ſhall not ſeruе vnto him no new ſeruice, but that the lands ſhalbe holden of him as it was before, & in this caſe the Abbot ſhall haue a writ of meſne, if he be diſtrained in his default, by force of the ſaid cõfirmation, where percaſe he might not haue ſuch a writ before, &c. Alſo if I be ſeiſed of a villein, as of a villein in groſſe, & another taketh him out of my poſ-

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ſeſſion claiming him to be his villein, whereas he hath no right to haue him as his villeine, & after I confirme the eſtate to him that he hath in my villeine, this confirmation ſeemeth void, for this, that none may haue poſſeſſion of a mā as of a Villeine in groſſe, but he which hath right to haue him as his villeine in groſſe, and inſomuch that hee to whome the confirmation was made, was not ſeiſed of him as of his villeine at the time of his confirmation, ſuch confirmatiō is void: but in this caſe if ſuch words were in the deede, Sciatis me dediſſe & confirmaſſe tali &c. talem villanum meum, this is good, but this ſhall enure by force and way of graunt, and not by way of confirmation &c.

Alſo ſometimes theſe verbes (Dedi & conceſſi) enure by way of extinguiſhment of the thing giuen or granted. As a tenant holdeth of his lord by certaine rent, & the lord by his deed granteth to the tenāt & to his heires ỹ rent &c. this ſhall enure to the tenant by way of extinguiſhmēt, for by this grant the rent is extinct. In the ſame maner it is, where one hath a rēt charge of certain land, & he granteth to the tenant of the land the rent charge, and the cauſe is for this, that it appeareth by the words of the grant, that the will of the donor is, that the tenant ſhall haue the rent &c. inſomuch that he may haue no rent out of his own land, for this the deed ſhalbe vnderſtood & taken for the moſt aduantage & auaile of the tenant that it may be taken, & that is by way of extinguiſhment.

Alſo

Also, if I let lād to a man for term of yeres, and after I confirme his estate without moe wordes put in ꝑ deed, he hath no greater estate but for terme of yeres, as he had before: But if I releas to him my right that I haue in the lād without moe wordes put in ꝑ deed, he hath estate of franktenement. And so mayst thou my child vnderstād great diuersities betweēn releases & confirmations. And if I be within age, & let land to one for term of xx. yeres, and he graunteth the land for term of x. yeares, so that he graunteth the parcell of the terme: In this case when I am of full age, if I release vnto the grauntē of the lessē &c. this release is voyd, for this, that there is no priuitie betweēn him & me. But if I confirme his estate, then this Confirmation is good: But if my lessē grant all his estate to another, then my releas made to the grantē is good & effectuall.

Also, if a man grant a rent charge out of his land to another for terme of his life, & after hee confirmeth his estate in ꝑ same rent, to haue & to hold to him in fee taile, or in fee simple, this confirmation is void, as to the inlarging of his estate, for this, that he that confirmeth had no reuersion in the rent: but if a man be seised in fee of rent seruice, or of rent charge, & he granteth the rent to another for terme of life, & the tenant attorneth, & after he confirmeth ꝑ estate of the grātē in fee tail, or in fee simple, this confirmation is good as to inlarge his estate after the wordes of the deed of confirmation, for this

that

that the that confirmed the eſtate at the time of the confirmation had the reuerſion of the rent &c. But in this caſe aforeſaid, where a man granteth a rent charge to another for terme of life, if he will that the grantee ſhall haue eſtate in the taile, or in fée, him behoueth that the deed of the graunt of the rent charge for terme of life, be ſurrendred or cancelled, & then to make it a new deed of ſuch a rent charge, to haue and to take to the grauntee in the taile, or in fee.

Ex paucis dictis intendere plurima poſſis.

¶ Attournement.

ATtornement is, if there be Lord and Tenant, and the Lord will grant by his deed the ſeruice of his tenant to an other for terme of yeres, or for term of life, or in taile, or in fee, it behoueth that the tenant attourn to the grātee in the life of the grātor by force & vertue of the grant, or otherwiſe the grant is void. And attournment is none other thing in effect, but when the tenant hath heard of the grant made by his Lord, that the ſame tenant by word agree to the ſaid grant, as to ſay to the grantee, I agree me to the grant made to you, or I am well content of the grant made to you &c. But the more common attournement is to ſay, Sir, I attourne to you by force of the ſame grant, or I become your tenaunt &c. or to deliuer vnto the grātee j. d. ob. or farthing, by way of attournement &c.

Alſo, if a man be ſeiſed of a manour, which manor is parcel in demeſn, & parcel in ſeruice,

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if he will alien such a manor to another, it behoueth that by force of the alienation all the tenants ỹ hold of the alienor (as of this manor &c.) attourne to the Alienée, or otherwise the seruices abide cõtinually in the alienor, except tenãts at will, for it nedeth not that tenãts at will attorne vpõ such alienatiõ &c. for this that the same lands or tenemẽts ỹ they hold at will do passe to ỹ alienée by force of such alienation.

Also, if there be lord and tenant, and the tenant letteth the tenements to a man for terme of life, the remainder to another in fee, if the Lord grant the seruices to the tenant for term of life in fee, in this case the tenant for terme of life hath fee in the seruices, but the seruices be put in suspence during his life, but his heires shall haue the seruices after his death, and in that case it nedeth not attournement, for by the acceptance of the deed of him that ought to attourne, this is attournement in it selfe &c. But where the tenant hath as great and high estate in the Tenements as the Lord hath in the seignioxie, in such case if the Lord graunt the seruice vnto the tenant in fee, this enureth by way of extinguishment, Causa qua supra.

Also, if there be Lord & tenant, & the tenant maketh a lease to one for term of life, sauing the reuersion vnto him, if the Lord grant the seignioxie to the tenãt for term of life in fee, in this case it behoueth that he in the reuersiõ attorne to the tenãt for terme of life by force of ỹ grãt, or otherwise the grant is void, for this that he

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in the reuerſion is tenant to the Lord.

Alſo, if there be Lord and tenaunt, and the tenant holdeth of the Lord by twentie maner of ſeruices, and the Lord graunteth his ſeigniory to another, if the tenant pay or doe any of the ſeruices to the graunte, this is a good attournement, of and for the ſeruices, though that the tenants intent was to attourne but of the ſame parcell, for this that the Seignorie is an whole thing, though that there bee diuers manner of ſeruices that the Tenaunt ought to doe.

Alſo, if there be Lord and tenannt, and the tenant holdeth of the Lord by many maner of ſeruices, and the Lord graunteth the ſeruices to another by fine, if the graunte ſue a Scire facias out of the ſame fine, for any parcell of the ſeruices, and had iudgement to recouer, this iudgement is a good attournement in the law for all the ſeruices.

Alſo, if the Lord of the rent graunteth the ſeruices vnto another, and the tenant attourneth by a penie, and after the graunte diſtraineth for rent behind, and the Tenaunt to him maketh reſcous: In this caſe the graunte ſhall haue no Aſſiſe of the rent, but her ſhall haue a writ of Reſcous, for that the gift of the peny was but by way of attornement. But if the tenant had giuen vnto the graunte the ſaid peny as parcell of the rent, or a halfe penie, or a farthing, by way of ſeiſin of the rent, then this is a good attournement, and alſo it

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is good a seisin to the grantee of the rent, and then vpon such rescous the grantee shall haue an Assise &c.

Also, if a man let Tenements for terme of yeres, by force of which the lessee is seised, and after the Lord graunteth by his deede the reuersion to another for terme of life, or in taile, or in fee, it behoooueth him in this case that the tenant for terme of yeares attourne, or otherwise nothing passeth to such graunte by such deed. And if in this case the tenaunt for terme of yeres attourne to the grauntee, then by and by passeth the franktenement to the grauntee by such attournement, without any liuery of seisin &c. for this, if any liuerie shall bee made, or needeth to be made in such case, then the tenant for terme of yeres shall bee at the time of the liuery of seisin out of his possession, which should be against reason.

Also, if Land bee let to a man for terme of yeres, the remainder to another for terme of life, reseruing to the lessor a certain rent by the yere, and liuery of seisin is made vpon this to the tenant for term of yeres, if he in the reuersion in such case grant his reuersiõ to another &c. and the tenant that is in the remainder after the term of yeres attourneth, this is a good attournement, and he to whome the reuersion is granted, by force of such attournement shall distraine the tenant for terme of yeres for the rent due after such attournement, though the tenant for term of yeres neuer attourned vnto him,

him, and the cause is for that, where the reuersion is dependant vpon the state of franktenement, it sufficeth that the tenant of the franktenement attorne vpon such graunt of reuersion &c. And it is to wit, that where a lease for terme of yeres, or for terme of life, or a gift in the taile is made to any man, reseruing to such a lessor or donor certain rent, if such a lessor or donor graunt his reuersion to another, and the tenant of the Land attorne, the rent passeth to the grantee, though in the deed of the graunt of reuersion, no mention is made of the rent, for this that the rent is incident to the reuersion in such case, & not e conuerso, for if a man will graunt the rent in such case vnto another, reseruing to him the reuersiõ of the land, though the tenant attorne to the grantee, this shall be but a rent secke &c.

Also, if a man let land to another for terme of life, & after such lease he confirmeth by a deed the estate of the tenant for terme of life, the remainder to another in fee, and the tenaunt for terme of life accepteth the deed, then is the remainder indeed to him to whõ the remainder was giuen or limited in the same deed, for by the acceptance of the tenant for terme of life of the same deed, this is a grãt of him, & so an attournment in law: But yet he in the remainder shal haue none action of waste, nor other benefit by such remainder, but if he haue ỹ same deed in his hãd by which the remainder was graunted vnto him, & for this that in such case

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the tenant for terme of life will retaine to him the deed, to the intent that he in the remainder shall not haue an action of waſt againſt him, for this that he may not come to haue the poſſeſſion of the deed &c. It ſhall be good in ſuch caſe for him in the remainder, that a deede indented bee made by him ẏ will make the confirmation, and the remainder ouer &c. And he that maketh ſuch confirmation deliuer a part of the Indenture to the Tenaunt for terme of life, and the other part to him that hath the remainder, and then he by ſhewing of the part of the Indenture, may haue an action of waſt againſt the tenant for terme of life, & alſo other aduantage, that he in the remainder may haue in ſuch caſe.

Alſo, if two Joyntenants be, which let land to another for terme of life, yeelding to them and their heires a certaine rent by yeare: In this caſe if one of the two Jointenants in the Reuerſion releaſe to the other Joyntenaunt in the ſame reuerſion, this releaſe is good, and he to whom the relaſe is made, ſhall haue onely the rent of the tenaunt for terme of life, and ſhall haue a writ of waſt againſt him, though he neuer attorned by force of ſuch releaſe. And the cauſe is, for the priuitie that once was betweene the tenant for terme of life, and them in the Reuerſion.

In the ſame manner, and for the ſame cauſe it is where a man letteth Land to an other for terme of his life, the remainder to another

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for terme of his life, reseruing the reuersion to the lessor, in this case if he in the reuersion releas to him in the remainder &c. & to his heirs all his right &c. then he in the remainder hath a fee &c. and shall haue a writ of waste against the Tenaunt for terme of life without any attournement of him &c.

Also, if a leale be made for terme of life, the remainder vnto an other in the taile, the remainder ouer to the right heires of the tenant for terme of life, in this case if the tenaunt for terme of life graunt his remainder in fee to an other by his deed, the remainder by and by passeth by his deed without any other attornmēt: For if any ought to attourne in this case, it should be ỹ tenāt for terme of life. And it were in vain that he attorne vpō his own grant &c.

Also, if there be Lord and tenant, & the tenant holdeth of the Lord by certaine rent and knights seruices, if the Lord grant the seruices of the tenant by fine, the seruices be by and by in the grauntee by force of the fine, but yet the Lord may not distraine for any parcell of his seruices without attornement. But if the tenant dy, his heire being within age, ỹ lord shall haue the ward of the body of the heire & of the land &c. howbeit that he neuer attorned: for this that the seigniory was in the grantee maintenant by force of the fine.

And also in such case if the tenant die without heire, the Lord shall haue the tenancie by way of Escheat. In the same maner it is if a

man grant the reuersion of his tenāt for term of life to another by fine, the reuersion passeth presently to the grauntee by force of the fine, but the grantee shall neuer haue action of wast without attornment &c. But yet if the tenant for terme of life alien in fee, the grauntee may enter &c. for this that the reuersiō was in him by force of the fine, and such alienation was to his disinheritance. But in this case where the Lord graunteth the seruices of his tenant by fine, if the tenāt die, his heire being of full age, the grantee by the fine shal not haue the releife, nor neuer shall distraine for the releife, except there had been some attornement of the tenant that dyed &c. for of such things that lye in distresse, vpon the which a writ of Replegiare is sued, &c. a man ought to auow the taking good and rightcous &c. and there ought to be attournement of the tenant, howbeit that the grant of such seruices be by fine. But to haue ward of lands & tenements so holden during the nonage of the heire, or them to haue by way of Escheat, there needeth not any distresse &c. but an entrie in the Land by force of the right of the seigniory that the grantee hath by force of the fine.

Also, in auncient Boroughes or Cities where tenements within the same boroughes or Cities bene deuisable by testament by the custome and the vse &c. if in such Borough or Citie a man be seiled of rent seruice, or of rent charge, and he deuiseth such rent or seruice to

any

another by his testament, & dyeth &c. In this case hee to whome the deuise is made may distrain for the rent or the services behind, howbeit that the tenant neuer attourned. In the same maner it is, where a man letteth such tenements deuisable to another for terme of life, or for terme of yeares, & deuiseth the reuersion by his testamēt to another in fee, or in fee taile, and dyeth, and anon after that the tenant maketh wast, hee to whome the deuise was made shall haue a writ of wast, howbeit that the tenant neuer attourned: and the cause is for this, that the will of the deuisor made by the testament, shall be performed after the intent of the deuisor, and if the effect of this should be vpon the attourning of the tenaunt &c. then percase the tenant would neuer attourne, and thē the will of the deuisor should neuer be performed, and therfore the deuisee shall distraine or haue an action of wast without attournement. For if a man deuise such tenements to another by his testament (habend' sibi imperpetuum) and dieth, and the deuisee entreth, he hath a fee simple, Causa qua supra, and yet if a dēd of feoffement were made to him by the deuisor of the same tenements (habendum & tenendū sibi imperpet') and liuerie and seisin were therupon made, he shall haue none estate but for terme of life &c.

Also, if a man be seised of a Manour which is parcell in demesne, and parcell in seruices, and thereof bee disseised, but the tenaunt

which holdeth of the manor, neuer attourneth to the disseisor: in this case, howbeit that the disseisor die &c. and his heire is in by descent, yet may the disseisee distrain for the rent being behind, & haue the seruice: But if the tenants come to the disseisor, & say: we become your tenants &c. or otherwise make attournement to him &c. and after the disseisor dieth seised &c. then the disseisee may not distrain for the rent, for this ꝑ all the manor descended to the heire of the disseisor. But if one hold of me by rent seruice, which is a seruice in grosse, & another that no right hath, claimeth the rent and receiueth and taketh the same rent of my tenant by coherion of distresse, or by other forme, and so disseiseth me by taking such rent, howbeit that such a disseisor die seised by such taking of the rent, yet after his death I may well distraine for the same rent being behind before the death of the disseisor, and also after his death: & the cause is this, that such is not by disseisor, but by election at my will: for howbeit that he took the rent of my tenant, I may at all times distrain my tenant for the rent behind &c. so it is to me, but as if I will suffer the tenãt to be by so much time behinde of payment to mee of the same rent: for the payment of my tenant to an other to whom he ought not to pay, is no disseisin to mee, nor shall not put me out of my rent, without my will and election, for howbeit that I may haue Assise against such a taker &c. yet this is at my election if I will take him as my

disseisor

diſſeiſor or not, ſo that ſuch diſcents of rents in groſſe ne putteth not out the lords from their diſtreſſe, but that at each time they may well diſtraine for the rent behind: And in this caſe if after the deceaſe of him that ſo wrongfully toke the rent, I graunt by my deed the ſeruices to another, and the tenant attourneth, this is good ynough, & the ſeruices by ſuch graunt & attournement, incontinent be in the grantee &c. But otherwiſe it is where the rent is parcell of the manor, and the diſſeiſor dyeth ſeiſed of the whole manor, as in the caſe beforeſaid.

Diſcontinuance.

DIſcontinuance is an auncient word in the law, and hath diuers ſignifications &c. but as to one intent it hath ſuch a ſignification, that is to ſay, where a man hath alened to an other certain Lands or tenements and dieth, and another hath right to haue the ſame lands or tenements, but he ne may enter in them, becauſe of ſuch alienation &c. As if an Abbot be ſeiſed of certaine lands & tenements in fée, and he alieneth the ſame lands & tenements to an other in fée, or in taile, or for terme of life, & the Abbot dieth, his ſucceſſor may not enter in the ſame lands and tenements, howbeit that hée haue right to haue them as in the right of the houſe, but he is put to his actiõ to recouer the ſame Lands or tenements which is called a writ de Ingreſſu ſine aſſenſu Capituli.

And if a man be ſeiſed of lād as in the right of his wife &c. and thereof infeoffeth another &c. and dieth, the wife may not enter, but ſhe is put vnto her action, the which is called Cui in vita. See Stat. 32. H. 8. c. 28. Leaſes.

Alſo, if tenaunt in the taile of certaine land thereof infeoffe another &c. and hath iſſue and dyeth &c. his iſſue may not enter in the land, howbeit that hee hath right and title to that, but that hee is put to his action, that is called a Formedon in the diſcender.

Alſo, if there be tenant in taile, and the reuerſion is to the donour and to his heires, if the tenant make a feoffement &c. & dieth without iſſue, he in the reuerſion may not enter, but is put to his action of Formedon in the reuerter. And in ꝯ ſame maner it is where there is tenant in ꝯ taile of certaine land where the remainder is to an other in the tayle, or to an other in fée, if the tenaunt in the taile alieneth in fée, or in fée taile &c. and after dyeth without iſſue, they in the remainder may not enter, but bée put to their writ of Formedon in the remainder &c. and for this that by force of ſuch feoffement and ſuch alienations in the caſes aforeſaid, and in like caſes thoſe which haue title and right after the death of ſuch a feoffor or Alienor, may not enter, but be put to their actions vt ſupra, therefore ſuch Feoffements and alienations be called diſcontinuances.

Alſo, if a tenant in the taile be diſſeiſed, & he releaſeth by his déed to the diſſeiſour, & to his heires

heires all the right ꝑ he hath in the same land, this is no discontinuāce, for this that nothing of right passeth to the disseisor but for terme of life of the tenant in the taile that made the release &c. But by the feoffement of tenant in the taile a fee simple passeth by the same feoffemēt by force of liuery of seisin &c. but by force of a release, nothing passeth but the right ꝑ he may lawfully & rightfully release without hurt or damage to other persons which thereto haue right after his decease &c. & so it is a great diuersitie betwēn a feffemēt of the tenant in the taile, & a releas of the tenant in the taile. But it is said, that if tenant in the taile in this case release to the disseisor, and bindeth him & his heires to warrantize &c. and dieth, & this warranty discendeth to his issue, then that is a discontinuance because of warrantize &c. But if a man haue issue a son by one wife which dyeth, and after he taketh another wife, & ꝑ tenements be giuen to him & his second wife, and to the heires of their two bodies ingendred, & they haue issue another sonne, then the second wife dyeth, and after the tenant in the taile is disseised, and he releaseth to his disseisor all his right &c. and bindeth him and his heires vnto warrantize, and dyeth, this is no discontinuance to the issue in the taile by the second wife, but hee may well enter &c. for this that the warrantize discended to his elder brother that his father had by his first wife.

In the same maner where the tenements he

diſcẽdable to ỹ ponger ſon after the cuſtome of borough Engliſh, which bee intailed &c. & the tenãt in ỹ taile hath iſſue 2. ſons & is diſſeiſed, & he releaſeth to his diſſeiſor all his right with warrãty & dieth, the ponger ſon may enter vpon ỹ diſſeiſor notwithſtãding the warrantize, for this that the warrantize deſcendeth to the elder ſon, for alway the warrantize deſcẽdeth &c. to him that is heire by the common Law.

Alſo, if an Abbot be diſſeiſed, & he releaſeth to the Diſſeiſor with warrantize, this is no diſcontinuance to his ſucceſſor, for this that nothing paſſeth by this releaſe but the right that he hath during the time that he is abbot, and this warrantize is expired by his priuation or by his death.

Alſo, if tenant in the tail be ſeiſed of certain land, and he letteth the ſame land for terme of yeares, by force of which leaſe the leſſee is in poſſeſſion, in which poſſeſſion the tenant in ỹ taile by his deed releaſeth all his right that he hath in the ſame land to the Leſſee and to his heires for euer, this is no diſcontinuance, but after the deceaſe of the tenant in the taile, his iſſue may well enter, for this that by ſuch releas nothing paſſeth but for terme of life of the tenant in the taile. In the ſame maner if the Tenant in the taile confirme the eſtate of the leſſee for terme of certain yeres to haue and to hold to him and to his heires, that is no diſcontinuance, for this that nothing paſſeth by ſuch confirmation, by the eſtate that the Tenant

nant in the taile had for terme of his life.

Also, if a tenant in the taile by his deed grant to another all his estate that he hath in the tenements entailed to him, to haue & to hold all his estate to the other & to his heirs for euer, & deliuereth seisin accordingly. In this case the tenant to whō the alienation was made, hath none other estate but for terme of life of ꝑ tenant in taile, & so it may well be proued ꝑ the tenant in the taile may not grant ne alien ne make any rightfull estate of the franktenemēt to another person but for terme of his own life &c. For if I giue certaine land in the taile to a man, sauing a reuersion to me, & after the tenant in the taile enfeoffeth another in fee, the feoffee hath no right estate in ꝯ tenements, for ij. causes. One is for that that by such feoffement my reuersiō is discontinued, which is a wrong act & not a rightfull act. Another cause is, if the tenant die, & his issue sueth a writ of Formedon against the feffee, the writ shall say & also the declaration, that the feoffee wrongfully him defoyced, therefore if wrongfully hee him defoyced he had no right estate.

Also, if land be let to a man for term of his life, the remainder to another in the taile, if he in the remainder will grant his remainder to another in fee by his deed, and the Tenant for terme of life attorneth, this is no discontinuance of the remainder.

Also, if a man be tenāt in the taile of auowson in grosse, or of cōmon in grosse, if he by his deed

deed, will grant the aduowson or the common to another in fee, this is no discontinuance, for in such case the graunter hath no estate but for term of life of the tenant in the taile that made this grant &c. Note well that such things as passe by way of graunt made by deed, made in the countrey &c. such grant maketh no discontinuance as in the case aforesaid, & other like cases &c. And howbeit that such be granted in fee, by fine leuied in the kings court &c. yet they make no discontinuance &c.

Also, if a man be seised in the taile of lands deuisable by testament &c. and hee deuiseth it to another in fee, and dyeth, and the other entreth, this is no discontinuance, for this that no discontinuance was made in the life of the tenant in the taile &c.

Also, if an Abbot haue a reuersion, or a rent seruice, or a rent charge, and will graunt that reuersion, rent seruice, or rent charge to another in fee, and the tenant attorneth &c. this is no discontinuance. In the same manner it is where an abbot is seised of an aduowson, or of such things that passe by way of grant without Liuery of seisin &c.

Also, if there bee graundfather tenaunt in the taile, father and sonne, and the graundfather is disseised by the Father, and the father maketh a feoffement in fee without warrantize and dyeth, and after the graundfather dyeth, the sonne may well enter vpon the feoffee, for this that this was no discontinuance, in

so

ſo much that ꝯ Father was not ſeiſed by force of the taple at the time of the Feoffement &c. but was ſeiſed in fee by diſſeiſin made to the Graundfather.

Alſo, if a woman inheritrix haue an husband within age, which maketh a feoffement of the tenements of the wife and dyeth, it hath beene queſtioned if the wife may enter or not. And it ſeemeth to ſome men that the entry of the wife after the death of her husband ſhalbe lawfull in this caſe, for whē her husbād made ſuch a feoffement &c. he might well enter notwithſtanding ſuch feoffement during the couerture, and hee might not enter in his owne right, but in the right of his wife &c. Ergo ſuch right that hee had to enter in the right of his wife &c. that right of entry abideth to the wife &c. after his deceaſe. And it hath bin ſaid, that if two Joyntenants being within age, make a feoffement in fee, and one of the children dieth, and the other ſuruiueth, inſomuch that both children might enter iointly in their lines, this right of entry groweth all to him that ſurui-ueth, and ſo he may enter into the whole &c.

Alſo, the heire of the husband that made the feoffement within age may not enter, for this that no right deſcendeth to ſuch an heire in the caſe afore ſaid, for this that the husbād had neuer any thing but in the right of the wife. And alſo when a child maketh a feoffement being within age, this ſhall neuer grieue nor hurt him, but that he may wel enter &c. & this ſhould

be

be against reason, that such a feoffement made by him that was not able to make such a feffement shall greiue or hurt other, to tolle other of their entries &c. And for these causes it seemeth to some, that after the death of such an husband so being within age at the time of the feoffement &c. that his wife may well enter &c.

Also, if a woman inheritrix taketh an husband and hath issue a sonne, and the husband dyeth, and shee taketh another husband, & the second husband letteth the land that he hath in the right of his wife to another for terme of his life, and after the wife dyeth, and after the tenant for term of life surrendreth his estate to the second husband &c. Inquire if the sonne of the wife may enter or not, in this case vpon the second husband during the life of the tenaunt for terme of life. But it is cleare law in this case, ꝑ after the death of the tenaunt for terme of life, the son of the wife may well enter, for this that the discontinuance that was made all only for terme of life is determined by the death of the same tenant for terme of life &c.

Also, if the parson or vicar of a church alien certain lands or tenemẽts parcel of his glebe &c. to another in fee and dyeth, or resigneth &c. his successor may wel enter, notwithstanding such alienation, as it is said in a Note Anno 2. He. 4, Termino Mich. quæ sic incipit, Nota quod dictum fuit pro lege, In a writ of Accompt brought by the Master of a Colledge, that if a parson or a vicar grant certaine land

that

that is of the right of his church to another, & dyeth, or changeth, ỹ his ſucceſſor may enter: And I trow the cauſe is for this, that the parſon or Vicar that is ſeiſed &c. in right of the Church, hath no right of the fée ſimple in the tenements, but the right of the fée ſimple abideth to another perſon: And for this cauſe his ſucceſſor may well enter, notwithſtãding ſuch alienation &c. for a Biſhop may haue a writ of right of tenements of right of his biſhoprycke, for this, that the right of fée ſimple abideth in him & in his chapter. And a Dean may haue a writ of right &c. for this that the right abideth in him & in his Chapter. And an Abbot may haue a writ of right, for this that the right abideth in him, & in his Conẽt, & ſic de alijs caſib⁹ conſimilib' &c. but a parſon or a vicar may not haue a writ of right &c. but the higheſt writ ỹ they may haue is a writ de Iuris vtrũ, ỹ which is a great prowfe, that the right of fée ſimple is in abeiance, ỹ is to ſay, all onely in the remembrance, intendment, & conſideratiõ of the law: for me ſéemeth that ſuch a thing & ſuch a right that is ſaid in diuers bookes to be in abeiãce, is as much to ſay in latin, s. talis res, vel tale rectũ que vel qd' non eſt in homin'adtunc ſupeꝛſtite, ſed tantummodo eſt & conſiſtit in conſideratione & intelligẽtia legis &c. & quidã alij dixerũt talem rem, aut tale rectum fore in nubibus &c. But I ſuppoſe that they vnderſtand theſe wordes in nubibus &c. as I haue ſaid beforé.

Alſo, if a Parſon of a Church die, now the frank-

frankstenement of the glebe of the parsonage it in no man, during the time that the parsonage is void, but is in abeiance, that is to say, in cõsideration and intelligence of the Law, till an other be made Parson of the same Church, & immediatly whẽ another is parson, the frankstenement in deed is to him as successor.

Also, some men peraduenture will argue & say, ẏ insomuch that the parson with the assent of the patron and ordinarie, may grant a rent charge out of the glebe of his parsonage in fee, & so charge the glebe of his parsonage perpetually, Ergo they haue fee simple, or 2. or one of them hath fee simple at the least &c. so thus it may be answered, that it is a principle in law, that of euery land there is a fee simple in some man, or els the fee simple is in abeiãce &c. And another principle is, that euery land of fee simple may bee charged with a rent charge in fee, by one way or by another &c. & when such rent is granted by the deed of the parson, the patrõ, & the ordinary in fee, none shall haue no preiudice nor losse by force of such graunt, but the grauntors in their lines, & the heire of the patron, & successor of the ordinary after their deceases, & after such charge if the parson dy, his successor may not come to the same Church to be parson of the same church by the law, but by presentment of the patron, and admission & institution of the ordinary &c. And for this cause ℭ behoueth that the successor hold him contẽt and agreed with that which his patron and ordi-

ordinary lawfully haue done before. But the cauſe that ſuch rent charge is gone, is for this, ꝑ they which haue entries in the ſaid church, that is to ſay, the Patron after the law temporall, and the Ordinary after the law ſpirituall, were aſſented as parties vnto ſuch a charge &c. and this ſeemeth the very cauſe that ſuch glebe may bee charged in perpetuity &c. See Stat. 13. Eliz. cap. 10.

Alſo, if a biſhop alien lands which bin parcell of his Biſhoprick, and dieth, this is a diſcontinuance to his ſucceſſor, for this, that hee may not enter, but is put to his Writ de Ingreſſu ſine aſſenſu capituli &c. See ſtat. 1. Eliz.

Alſo, if a Deane alien land, parcell of his Deanry, and dieth, his ſucceſſor may not enter, but he may haue a Writ de Ingreſſu ſine aſſenſu capituli &c. See Stat. 13. Eliz. cap. 10.

But if the Deane & the Chapter haue land to them and to their ſucceſſors in common &c. Howbeit that the Deane alien ſuch lands, his ſucceſſors may well enter, for this, that the franketenement at the time of the alienation, was aſwell in the Chapter as in the Deane. But where the deane is ſole ſeiſed as in right of his Deanry, then ſuch alienation is diſcontinuance to his ſucceſſor as is afore ſaid.

Alſo, ſome men will argue and ſay, that if an Abbot & his Couent be ſeiſed in their demean as of fee, of certain land to them & to their ſucceſſors &c. & the Abbot without aſſent of his Couent alieneth the ſame land vnto another,

and

and dieth, this is a discontinuãce to his succes-sors &c. & by the same they will say, that where a Deane & a Chapter is seised of certain land to them & to their successors, if the Dean alien the same lands &c. this shalbe a discontinuance to his successors, so that his successor may not enter &c. To this may be answered, that there is a great diuersity betwéen ẏ said 2. cases, for when an Abbot & the Couent be seised &c. yet if they be disseised, the Abbot shal haue assise in his own name, without the naming of his co-uent &c. And if a mã may or will sue a Prẽcipe (qd' reddat of the same lãds whẽ they be in the hands of the Abbot & his Couent, it behoueth that such an action bee sued against the Abbot only without naming of the couẽt &c. for this, that all they be dead persons in the Law, saue only the Abbot that is soueraigne &c. and this is because of the soueraignetie &c. for else hee should bee as the other Monkes of the Co-uent &c. But the Deane & the Chapter bee no dead persons in the lawe &c. For each of them may haue an action by himself in diuers cases, and of such Lands or Tenements which the Deane and Chapter haue in Common &c. if they be disseised, that the Deane & the Chap-ter shal haue assise, & not the Deane alone, and if another will heue an actiõ real of such lands or tenements against the Dean &c. it behoueth him to sue against the Deane and Chapter, & not against the Deane alone &c. and so appea-reth great diuersity betweene these two cases.

Also

Alſo, if the Maſter of an Hoſpitall diſcontinue certaine land of his Hoſpital, his ſucceſſor may not enter, but he is put vnto his writ De Ingreſſu ſine aſſenſu confratrum & ſororum ſuarum. And all ſuch writs do plainly appeare in the Regiſter &c.

¶ Remitter.

REmitter is an auncient terme in the Law, and it is where a man hath two titles to Lands or tenements, that is to ſay, one of an elder title, and another of a latter title, and he commeth to the Land by the later title, yet the law adiudgeth him to be in by force of ꝑ elder title, for this, that the elder title is the more ſure title, and the more worthy title, and then when a man is iudged in by force of the more elder title, this is vnto him ſaid a Remitter, for this, that the law ſhall admit him to be in the land by the elder title: as if the tenant in the the taile diſcontinue the taile, & after he diſſeiſeth the diſcontinuée, & ſo dyeth ſeiſed, whereby the tenements diſcend to his iſſue, or to his coſin inheritable by force of the taile: in this caſe this is to him to whom the tenemẽts deſcend which had right by force of the taile, a Remitter in the taile, for that, that the law ſhall put & adiudge him to be in by force of the taile, which is his elder title: for if he ſhalbe in by force of diſcent, then the diſcontinuée may haue a writ of Entry vpon the diſſeiſin in the Per against him, & recouer the tenements, and

his dammages, but inſomuch that hée is in by force of the taile, the title and the intereſt of the diſcontinuée is all vtterly annulled and defeated &c.

Alſo, if tenant in the taile enfeoffe in fée his Sonne or his coſin inheritable by force of the taile, the which ſonne or coſin at the time of the feoffement is within age, and after the tenant in the taile dyeth, and he to whome the feoffement was made is his heire by force of the title in the taile, this is a Remitter to the heire in the taile, to whom the feoffement is made: For howbeit that during the life of the tenant in the tail that made the feoffement, ſuch heire ſhalbe adiudged in by force of the feffemẽt, yet after the death of the tenant in the taile, ẏ heire ſhalbe adiudged in by force of the taile &c. and not by force of the feoffement, and though that ſuch an heire was of full age at the time of the death of the Tenant in the taile that made the feoffement, this maketh no matter, if the heire were within age at the time of the feoffement made to him. And if ſuch an heire being within age at the time of the feffement commeth to full age, liuing the tenant that made the feffement, & ſo being of full age, he chargeth by his déed the ſame land with a common of paſture, or with a rent charge, and after the tenant in the taile dyeth: Now it ſéemeth that the land is diſcharged of the common, and of the rent, becauſe the heire is in by another eſtate in the Land, then hee was at the time of the charge made,

made, inſomuch that he is in his Remitter by force of the taile, & ſo the eſtate that hee had at the time of the charge is vtterly defeated &c.

Alſo a principall cauſe why ſuch an heire in the caſes aforeſaid, and other caſes ſemblable ſhall be ſaid in his Remitter, is for this, that there is no perſon againſt whom that hee may ſue his writ of Formedon, for againſt himſelfe he may not ſue, & he may not ſue againſt none other, for none other is tenant in the franketenement, and for that cauſe the law adiudgeth him in his Remitter, that is to ſay, in ſuch plight, as he had lawfully recouered the ſame land againſt another.

Alſo, if land be tailed to a man and his wife, and to the heires of their two bodies engendred, the which haue iſſue a daughter, and the wife dieth, and the husband taketh an other, and hath iſſue another daughter, and diſcontinueth the taile, and after he diſſeiſeth the diſcontinuee, and ſo dieth ſeiſed, now the Land deſcendeth to the two daughters: In this caſe as to the elder daughter that is inheritable, this is a Remitter but of the halfe, & as to the other halfe, ſhee is put to her action of Formedon againſt her Siſter, for in this caſe y two ſiſters be not tenants is parcenary, but be tenants in common, for this that they be in by diuers titles, for the one ſiſter is in her Remitter by force of the taile as to that that vnto hee belongeth: And the other ſiſter is in, as to that that belongeth to her, in fee ſimple by the

diſcent of her father. In the ſame maner it is if the tenant in the taile infeoffe his heire apparant in the taile, the heire being within age, & another Jointenant in fée, & the tenant in the taile dyeth, now the heire in the taile is in the Remitter, as to the halfe, and as to the other halfe he is put to his Writ of Formedon &c.

Alſo, if a tenant in the taile infeoffe his heire apparant, the heire being at full age at the time of the feoffement, & after the tenant in the taile dieth, this is no Remitter to the heire, for this that it was his owne folly, that he being of full age would take ſuch feoffement &c. But ſuch folly may not bee adiudged in the heire being within age at the time of the feoffement &c.

Alſo, if a tenant in ꝑ taile infeoffe a woman in fée, and dieth, & his iſſue within age taketh the woman to wife, this is a Remitter to the child, and the wife then hath nothing, for this that the husband & the wife bee but one perſon in the law: And in that caſe the husband may not ſue a Writ of Formedon, vnleſſe he will ſue againſt himſelfe, the which ſhall be inconuenient, and for that the Law iudgeth the heire in his Remitter, for this, that no folly may bee arretted to him being within age at the time of the ſpouſals &c. And if the heire be in his Remitter by force of the taile, it followeth by reaſon that the wife hath nothing &c. for inſomuch that the husband & the wife be but one perſon, the land may not be ſeuered by halfes, and for ſuch cauſe the husband is in his Remitter of

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the whole. But otherwise it is, if such an heire be of full age at the time of the spousals, then the heire hath nothing but in the right of his wife.

Also, if a woman seised of certaine land in fée taketh an husband, the which alieneth the same Land to another in fée, and the Alienée letteth the same Land to the Husband and the wife for terme of their two lines, saving the reuersion to the lessor & to his heires, in this case the wife is in her Remitter, and shée is seised in deed in her demesne as in Fée, as shée was before, for this, that the taking of estate shalbe adiudged in the law the deed of the husband, and not the deed of the wife, so that no folly may be iudged in the wife that is couert in such case: And in this case the lessour hath nothing in the reuersion, for this that the wife is seised in Fée. But in this case, if the lessor will sue an action of waste against the husband and his Wife, for this that the Husband hath made Waste, the Husband may not barre the Lessour for to shew this, that the taking of estate made vnto him and to his wife, made a Remitter to his wife, for this that the Husband is stopped to say this against his feoffement and owne repriall of estate for terme of life to him and his wife, and yet the Lessour hath no reuersion, for this that the fée simple is in the wife. So a man may see a matter in this case, that a man shall bee stopped by a matter in deede, though no writing by deede indented,

or otherwise be thereof made. But if in an action of waſt the Husband make default at the graund diſtreſſe, and the Wife prayeth to be receiued, and is receiued, ſhe ſhall well ſhew all the matter, and how ſhee is in her Remitter, and ſhall barre the leſſor of his action: For in euery caſe that the wife is receiued for default of her husband, ſhee ſhall plead and haue the ſame aduantage in pleading, as ſhee were a woman ſole. And howbeit that the Alienee made no leaſe to the husband and his wife by deede indented, yet this is a Remitter to the wife, and though the Alienee yelded the ſame Land to the husband and his wife by fine for terme of their liues, yet this is a Remitter to the wife, for this that the wife couert that taketh eſtate by fine ſhall not be examined by the Iuſtices. And here note well, that when any thing ſhall paſſe from the wife that is couert of husband by force of a fine, as the husband & wife make conuſance of right to another &c. or make a grant to yeeld to another, or releaſe by a fine to another, & ſic de ſimilibus, where the right of the wife paſſeth frō the wife by force of the ſame, the wife in all ſuch caſes ſhall bee examined before that the fine be accepted. And ſuch fines conclude ſuch wiues couert for euer. But where nothing is moued in the fine, but all onely that the husband & the wife take eſtate by force of the ſame fine, this ſhall not conclude the wife, for this that in ſuch caſe ſhe ſhall neuer be examined.

Alſo

Alſo, if tenant in the taile diſcontinue in the taile, & hath a daughter, & dieth, & the daughter being of full age taketh an huſband, & the diſcontinuée maketh a leaſe of this to the huſband and his wife for terme of their liues, this is a Remitter in déed to the wife, and the wife is in by force of the taile, Cauſa qua ſupra.

Alſo, if Land be giuen to the huſband and his wife, to haue and to hold to thē and to the heires of their two bodies begotten, and after the huſband alieneth the land in fée, and taketh againe an eſtate to him & to his wife for terme of their two liues. In this caſe this is a Remitter indéed to the huſband & the wife, manger the huſband, for it may not be a Remitter to the wife, except it be a Remitter to the huſband, for this that the huſbād and his wife be but one perſon in the law, though that the huſband is ſtopped to claime this to bee a Remitter in him againſt his alienation, and his owne repriſell, as is afore ſaid.

Alſo, if land be giuen to a woman in the taile, the remainder to another in the taile, the remainder to the third in the taile, the remainder to the fourth in fée, & the wife taketh an huſband, & the huſband diſcontinueth the land of his wife, by this diſcontinuāce all the remainders be diſcōtinued, for if the wife dy without iſſue, they in ℈ remainder ſhal haue no remedy, but to ſue their writs of Formedon in the remainder whē they come to their time &c. But if after ſuch diſcontinuance, eſtate be made to

the husband and his wife for terme of their two lives, or for terme of another life, or another estate &c. for this, that this is a Remitter to the wife, this is a Remitter to all those in the remainder &c. For after this that the wife, that is in her Remitter, dyeth without issue, they in the Remainder may enter &c. without an action or suit &c. In the same manner it is of them which have the reuersion after such taile &c.

Also, if a man let a house to a woman for terme of her life, saving the reuersion to the lessor, & after one sueth a fained and false action against the woman, and recouereth the house against her by default, so that the woman may have against him a writ of Quod ei deforceat, after the Statute of Westminster the second chapter 4. now is the reuersion of the lessour discontinued, so that he may not have an action of Waste. But in this case, if the woman take an husband, and he that recouereth letteth the house to the husband and his wife for terme of their two lives, the wife is in her Remitter by force of the first Lease. And if the husband and the wife make waste, the first lessor shall have against him a writ of Waste, for this, that inasmuch that the wife is in her Remitter, he is remitted to his reuersion. But it seemeth in this case, if he that here commeth by the false Action, will bring an other writ of Waste against the Husband and his wife, the Husband hath no remedie against him,

him, but to make default at the great diſtreſſe &c. and to cauſe the wife to be receiued and to plead the matter againſt the ſecond leſſor, and to ſhew that the action by which he recouered was falſe and fained in the Lawe, and ſo the wife may barre &c.

Alſo, if the husband diſcontinue the land of his wife, and after taketh eſtate to him and to his wife, and a third man for terme of their liues, or in fée, this is a Remitter to the woman but as to the moity. And as for the other moitie it behoueth her after the death of her husband to ſue a Cui in vita.

Alſo, if the husband diſcontinue the land of his wife, and go ouer the Sea, & the diſcontinuée let the ſame land to the woman for terme of life, and deliuer to her ſeiſin, and after the husband commeth and agréeth to that liuery of ſeiſin, this is a remitter to the woman, and yet if the woman had béene ſole at the time of her Leaſe made to her, this ſhould do to her no Remitter, but inſomuch as ſhee was Couert baron, at the time of the Leaſe, and the liuerie of ſeiſin made to her, though that ſhe only take the Liuery of ſeiſin, this was a Remitter to her becauſe a woman couert ſhall be adiudged as an Infant within age in ſuch caſe &c. Inquire in this caſe if the husband when he commeth againe will diſagrée to the leaſe and liuery of ſeiſin made to his wife in his abſence, if this ſhall put the woman from her Remitter.

Alſo, if the Husband diſcontinue the tenements

ments of his wife, and the discontinuee is disseised, and after the disseisor letteth the said tenements to the Husband & his wife for terme of life, this is a Remitter to the wife: but if the husband and the wife were of couſin or cõsent that the disseisin should be made, then it is no Remitter to the wife, because shee is a disseisoresse. But if the husband were of couin and consent to the disseisin, and not the wife, then such leaſe made to the wife is a Remitter, because that no default was in the wife.

Also, if such a discontinuee had made estate of freehold to the Husband & the wife, by Indenture upon condition, &c. reserving to the discontinuee a certaine rent, and for default of payment a reentry, and because that the rent is behind, the discontinuee entreth, of this rent the woman shall haue Assise of Nouel disseisin, after the death of her husband against the discontinuee, because ꝑ the condition was wholly annulled, insomuch as the woman was in her remitter, yet the husband with his wife could not haue assise, because the husband is stopped.

Also, if the husband discontinue the Tenements of his wife, and taketh estate againe for terme of his life, the remainder after his decease to his wife for term of her life, in this case this is no Remitter to the wife during the life of her Husband, because that during the life of the husband, the wife hath nothing in the freehold, but if in this case the wife ouerliue the husband, this is a Remitter

to

to the wife, because that a freehold in law is fallen vpon her maugre her will, & insomuch that she can haue no action against none other person, and against her selfe she can haue no action, therefore she is in her Remitter, for in this case though that ꝑ woman enter not into the tenements, yet a stranger that hath cause to haue action, may sue his action against the woman of the same tenements, because shee is tenant in Law, though shee bee not tenant in deed, for Tenaunt of franktenement in deed is he, that if he be disseised of franktenement may haue Assise, but the tenaunt in the law before his entry shall haue no Assise: & if a man seised in fee of certaine land hath issue a sonne which taketh a wife, and the Father dieth seised, and after the sonne dieth before any entry made by him into the land, the wife of the sonne shall be endowed in the land, & yet he had no franktenement in deed, but he had a fee and a franktenemẽt in law. And note well, that a Præcipe quod reddat may be aswell maintained against him that hath the franktenement in law, as against him that hath franktenement indeed.

Also, if a tenant in the taile haue issue two sonnes of full age, and hee letteth the tailed Land to the elder Sonne for terme of his life, the remainder to the yonger sonne for terme of his life, and after the tenant in the taile dieth: In this case the elder son is not in his remitter, because he tooke estate of his father, but if the elder sonne die without issue of his bodie,

then

then this is a remitter of the yonger brother, because he is heire in the taile, and a franketenement in law is fallen vpon him by force of the remainder, & there is none against whome he may sue his action &c. In the same maner it is where a man is disseised, and the disseisour dieth thereof seised, and the tenements discend to his heire, and the heire of the disseisor maketh a lease to a man of the said tenements for terme of life, the remainder to the disseisée for terme of life, or in taile, or in fée, and the tenant for terme of life dyeth, now this is a Remitter to the disseisée &c. Causa qua supra.

Also, if a tenant in the taile infeoffe his son and another of the tailed Land in fée, and liuery of seisin is made to the other according to the deed, the Sonne not knowing thereof nor agréeing to the Feoffement, and after hee that tooke the Liuery of seisin dyeth, and the sonne occupieth not the Land, nor taketh any profit of the Land during the life of his Father, and after the Father dieth, now this is a Remitter to the sonne, because the fréehold is fallen vpon him by the survivor, and no default was in him, because hee neuer agréed &c. in the life of his Father, and there is none against who he may pursue his writ of Formedon &c. For if a man be disseised of certaine Land, and the the disseisor maketh a deed of feoffement, whereof he infeoffeth B. C. & D. and the liuery of seisin is made to B. and C. but D. was not at the liuery of seisin, nor neuer

agréed

agreed to the feoffement, nor never would take the profits &c. And after B. & C. die, and D. ouerliueth them, and the disseisée bringeth his writ sur disseisin in the Per, against the same D. he shall shew all the matter, & how that he never agreed to the feoffement, and so he shall discharge himselfe of damages, so that the demandant shal recouer no damage against him, though he be tenant of the franktenement of the land: And yet the statute of Glocester will, that the disseisée shall recouer damage in a writ of Entre, grounded vpon the Nouel disseisin, against him that is found tenant. And this is a proofe in the other case, that insomuch as the issue in the taile commeth to the franktenement not by his deed, nor by his agreement, but after the death of his father, this is Remitter to him insomuch that he can sue an action of Formedon against none other person.

Also, if an Abbot alien the land of his house to another in fée, and the Alienée by his deed chargeth the land with a rent charge in fée, and after the alienée enfeoffeth the Abbot with licence, to haue and to hold to the Abbot and his successours for euer, and after the Abbot dieth, and another is chosen and made Abbot: In this case the Abbot that is successor & his Couent be in their Remitter, and shal hold the land discharged, because that the same Abbot cannot haue an Action by his Writ of Entre sine assensu Capituli of the same lands against none other person. In the same manner it is

where

where a Bishop, or Deane, or other such persō alien &c. without assent &c. And after the Bishop taketh estate againe of the same Land by licence to him, and to his successors, and after the Bishop dieth, his successour is in his Remitter as in the right of his Church, and shall defeate the charge &c. Causa qua supra.

Also, if a man sue a false action against Tenant in the taile, as if a man will sue against him a Writ of Entre in the Post, supposing by his Writ that the Tenaunt in the taile had not his entrie but by A. of B. that disseised the graundfather of the demaundant, and that is false, and he recouereth against the tenant in the taile by default, and sueth execution, and after the tenant in the taile dieth, his issue may haue a Writ of Formedon against him that recouered: And if hee will plead the recouerie against the Tenant in the taile, the issue may say, that the sayd A. of B. disseised not the Graundfather of him that recouered in such manner, as his Writ supposeth, and so he shall falsifie his recouerie. Also, suppose that that was true, that the sayd A. of B. disseised the graundfather of the demaundant that recouered, and that after the disseisin the demandant or his father, or his Graundfather, by a deed had released to the Tenant in the taile, all the right that he had in the land &c. And this notwithstanding hee sueth his Writ of Entre in the Post against the tenant in the taile, in the manner as is aforesaid, and the tenant in the

taile

taple pleadeth to him, that the ſaid A. of B. diſſeiſed not his Graundfather, as his Writ ſuppoſeth: and vpon this they be at iſſue, and the iſſue is found for the demandant, whereby hee hath iudgement to recouer and ſueth execution, and after the Tenaunt in the taile dieth, his iſſue may haue a Writ of Formedon againſt him that recouered. And if hee will plead the recouery by action tried againſt his Father tenant in the taile, then hee may ſhew and plead the releaſe made to his Father, and ſo the action that was ſued was faint in the Law &c.

And it ſeemeth that faint action is as much to ſay in Engliſh, as fained action, that is to ſay, ſuch action, that though the words of his Writ bee true, yet for certaine cauſes hee hath no cauſe nor title by the law to recouer by the ſame Action. And falſe Action is where the wordes of the Writ be falſe: And in the two caſes before ſayd, if the caſe were ſuch that after ſuch a recouerie and execution thereof made, the tenaunt in the taile had diſſeiſed him that recouered, and thereof died ſeiſed, whereby the Land alſo deſcended vnto his iſſue, this is a Remitter to the iſſue, and the iſſue is in by force of the taile: And for that cauſe I haue put theſe two caſes aforeſaid, to informe thee (my Sonne,) that the iſſue is the taple, by force of a diſcent made to him after a recouery and execution thereof made againſt his auncеſter, may be aſwell in his Remitter,

as

as hee should by a discent made to him after a discontinuaunce made by the auncestor of the tayled Land by feoffement in the countrey, or otherwise.

Also, in the same case aforesaid, if the case were such that after the demãdant hath iudgment to recouer against the tenant in tail, and the same tenant in the taile died before any execution had against him, whereby the Tenements discend to his issue, and he that recouered sued a Scire facias to haue execution of the iudgement against the issue in the taile, the issue shal plead the matter, as before is said, and so shall proue that the recouery was faile or fained in the law, and so shal barre him to haue execution of the iudgement &c.

Also, if the tenant in the tail discontinue the tayle and dye, and his issue bringeth a writ of Formedon against the discontinuee being tenant of the freehold of the land, & the discontinuee pleadeth that he is not tenant, but otherwise disclaimeth from the tenancy in the land: In this case the iudgement shall be, that the tenant goe without day, & after such iudgement, the issue in the taile ꝑ is demandant may well enter in the land, notwithstanding the discõtinuance. And by such entry he shal be adiudged in his Remitter, & the cause is, because that if any man sue a Præcipe qd' reddat against any tenant of freehold, in which action the demandant shall not recouer damages, & the tenant pleadeth Non tenure, or otherwise disclaymeth

meth in the tenancy, the demandant may not auerre in the writ, that he is tenant as ꝯ writ ſuppoſeth. And for that cauſe the demandant after that the iudgement is giuen, that the tenaunt ſhall goe without day, may enter into the tenements demaunded, the which ſhall be as great aduantage to him in the law, as if he had iudgement to recouer againſt the tenaunt. And by ſuch entry hee is in the Remitter by force of the taile: but where the demandant recouereth damages againſt the tenant, there the demandant may auerre that he is tenaunt as the writ ſuppoſeth, and that for the aduantage of the demandant for to recouer his dammages, or elſe he ſhall not recouer his dammages, the which dammages be or were giuen him by the Law.

Alſo, if a man bee diſſeiſed, and the diſſeiſor dye, his heire being in by diſcent, now the entrie of the diſſeiſee is taken away. And if the diſſeiſee bring his writ of Entre vpon the diſſeiſin in the Per againſt the heire, & the heire diſclaimeth in the tenancy &c. the demandant may auerre his writ, that he is tenant as the writ ſuppoſeth, if hee will, for to recouer his damages. But yet if he will leaue the auerrement &c. he may lawfully enter into the land, becauſe of the diſclaimer, notwithſtãding that his entrie before was taken away. And that was aiudged before my maſter Sir Robert Danby, late chiefe Iuſtice of the Common place, & his Companions, 5. E. 4. fol. 1. & 45.

Also, where the entry of a man is lawfull, though that he take estate to him when he is of full age for terme of life, or in taile, or in fee, this is a Remitter to him, if such taking of estate bee not by deed indented, or by matter of record that shall conclude or stop him: For if a man be disseised, and thereof taketh estate of the disseisor without deed, or by deed Poll, that is a good Remitter of the disseisee.

Also, if a man let land for terme of life to an other, which alieneth to another in fee, & the alienor maketh estate to ye lessor, this is a remitter to the lessor, because his entry was lawfull.

Also, if a man be disseised, and the disseisor letteth the land to the disseisee by deed Poll, or without deed for terme of yeres, whereby the Disseisee entreth, this entry is a Remitter to the disseisee: for in such case where the entrie of a man is lawfull, & a lease is made to him though that he claime by words in the Countrey, that he hath estate by force of such Lease, or saith openly that hee claimeth nothing in the land, but by force of such lease, yet this is a remitter to him, for such claime in the countrey is nothing to purpose: but if hee claime in a court of record that he hath estate but by force of such lease and not otherwise, then he is concluded &c.

Also, if two Joentenaunts seised of certaine land in fee, the one being of full age, the other within age be disseised, and the disseisor dieth seised, and his issue entreth, the one of the joyn-

ioyntenants being then within age, and after that he commeth to ful age, the heire of the disseisor letteth the land to the same ioyntenants for terme of ther liues, this is a Remitter as to the halfe to him that was within age, because that he is seised of the moity that belongeth to him in fee, because his entry was lawfull. But the other iointenãt hath in the other halfe but estate for terme of life by force of the leas, because his entry was taken away &c.

Warranty.

IT is commonly said, that there be three maner of warranties, that is to say: warranty lineall, warranty collaterall, and warrantie that beginneth by disseisin. And it is to wit, that before the statute of Gloucester, all warranties which discended to them which were heires to them that made the warrantie, were barres to the same heires to demaund any lands or tenements against those warranties, except the warranties that began by disseisin, for such warrantie was neuer barre to the heire, because the warranty began by wrong, that is to say, by disseisin.

Warrantie that beginneth by disseisin is in such forme: As where there is father & sonne, & the sonne doth purchase land &c. and letteth the same land to his father for terme of yeares, and the father by his deed thereof infeoffeth an other in fee, and bindeth him and his heires to

warranty, & if the father die whereby the warranty discendeth to his sonne, this warranty shall not barre the sonne, for notwithstanding this warranty, the sonne may well enter into the land, or haue an Assise against the alienee if he will, because the warranty began by disseisin: For whē the father that had no estate but for terme of yeres made a feffement in fee, this was a disseisin to the son of the franktenement that then was in the son. In the same manner it is, if the sonne let vnto the father the land to hold at will, & after ỹ father maketh a feffemēt with warrāty &c. And as it is said of ỹ father, so it may be said of euery other auncester &c.

In the same maner it is if tenant by Elegit, tenant by statute marchant, or tenant by statute staple, maketh a feoffement in fe with warranty &c. this shall not bar the heire that ought to haue the land, because that such warranties begin by disseisin.

Also, if a warden in chiualry, or warden in socage, make a feffement in fee, in fee tail, or for terme of life with warrāty &c. such warrāties be no bars to the heires to whom the land shall descend, because that they begin by disseisin.

Also if the father & the sonne purchase certaine lands or tenements, to haue & to hold to them ioyntly &c. and after the father aleneth the whole to another, and bindeth him and his heires to warranty &c. and after the father dieth, this warranty shall not barre the sonne of the moity that belongeth vnto him of the same tene-

tenement, because ỹ as to the moity that belonged to ỹ son, the warranty began by disseisin.

Also, if A. of B. be seised of a meale, and F. of G. that hath no right to enter in the same meale, claiming to hold the same meale to him & to his heires, enter into the same meale, but A. of B. then is continually dwelling in the same meale, in this case the possession of the franketenement shalbe alway adiuged in A. of B. & not in F. of G. because that in such case where two bee in one meale, or in other tenements, & the one claimeth by one title, and the other by another title, ỹ law shall adiudge him in possession that hath right to haue the possession of the same tenement. But in the case aforesaid, if F. of G. make a feoffement to certaine barretors & extortioners in the countrey for to haue maintenance of them of the same meale, by a deed of feoffement with warranty, by force of which the said A. of B. dare not dwell in the same meale, but goeth out of the same mese, this warrãty beginneth by disseisin, because ỹ such a feffement was cause that the said A. of B. left ỹ possessiõ of the same meale.

Also, if a man that hath no right to enter in anothers tenements, enter into the said tenements, and incontinently maketh a Feoffement to other persons by his deede with warranty, and deliuereth to them seisin, this warranty beginneth by disseisin, because that the disseisin and the feoffement were made as it were at one time. And that this is Law, ye

may ſée it in a plée Anno 31. Edwardi tertij in a writ of Formedon in the reuerſion, Gart' Fitzh. 28.

Warranty lineall, is where a man ſeiſed of certaine lands in fée, maketh a feoffement by his déed to another, and bindeth him and his heires to warranty, and hath iſſue & dieth, and the warranty diſcendeth to his iſſue, this is a lineall warranty: And the cauſe why this is a lineall warranty, is not becauſe that ỹ warranty diſcendeth from the father to his heire, but the cauſe is, becauſe that if no ſuch déede with warranty had béen made by the father, then the right of the tenements ſhould deſcend to the heire, and the heire ſhould conuey the diſcent from the father &c. For if there be Father and ſonne, and the ſonne purchaſe Tenements in fée, and the father diſſeiſeth the ſon thereof, and alieneth it to another in fée by his déed, and by the ſame déed bindeth him and his heires to warrant the ſame tenements and ſo forth, and the father dieth, now is the ſon barred to haue the ſaid tenements, for he may by no ſuit, nor by any other meanes haue the ſaid tenements, becauſe of the ſaid warranty: And that is a collaterall warranty, & yet the warranty deſcendeth lineally from the father to ỹ ſon. But becauſe ỹ if no ſuch déed with warrãty had bin made, the ſon in no manner might conuey the title that he hath of the tenements frõ his father to him, inſomuch that his father had no eſtate nor right in the tenements, ther-

fore

foꝛe ſuch warranty is called collaterall warranty: Inſomuch that he that made the warranty is collaterall to ꝯ title of the tenements, and that is as much to ſay, that he to whome ꝯ warrãty diſcended, could not conuey the title that he had in the tenements by him that made the warranty in this caſe, if no ſuch warranty had bẽne made.

Alſo, if there be Graundfather, Father, and ſonne, & the graundfather is diſſeiſed in whoſe poſſeſſion the father releaſeth by his dẽd with warranty &c. and dieth, and after the graundfather dyeth, now is the ſonne barred of the tenements by the warranty of his father, & this is called lineall warranty, becauſe that if no ſuch warranty had bin made, the ſonne might not haue conueyed the right of the tenements to him, noꝛ ſhew how he is heire to the grandfather, but by meanes of the father &c.

Alſo, if a man haue iſſue three ſonnes and is diſſeiſed, and the elder ſonne releaſeth to the diſſeiſoꝛ by his dẽd with warranty &c. and dieth without iſſue, and after this the Father dieth, this is a lineall warranty to the ponger ſonne, becauſe that though the elder ſonne died in the life of the Father, yet by poſſibilitie it might bee, that hee might conuey to him the title of the land by his elder bꝛother, if no ſuch warranty had bẽn made: Foꝛ it might be that after the death of the Father, the elder brother entred into the tenements and dyed without iſſue, and then the ponger Sonne ſhall conuey

to him the title of his elder brother. But in this case, if the yonger son releas with warrãty to the disseisor, and dyeth without issue, this is a collateral warranty to the eldest sonne, because that of such land as was to ỹ other, the elder brother by no possibility might convey to him the title by meane of the yonger brother.

Also, if the tenant in the taile hath issue three sonnes, and discontinue the taile in fee, and the middle sonne releaseth by his deede to the discontinuee, and bind him & his heires to warrantize &c. and after the tenant in the taile die, and the middle dyeth without issue, now is the elder sonne barred to haue any recouerie by a writ of Formedon, because that the warranty of the middle brother is collateral to him, insomuch that hee may by no maner convey to him by force of the taile, any discent by the middle brother, and therefore it is a collaterall warranty. But if in this case the elder brother die without issue, now the yonger brother may well haue a Formedon in the discender, & recouer the same land, because that the warranty of the middle brother is lineall to the yonger brother, because it may be, that by possibility the middle brother may be seised by force of the taile after the death of his elder brother, and then the yongest brother may convey his title of discent by the middle brother &c.

Also, if the tenant in the tail discontinue the taile, & hath issue and dye, and the uncle of the issue releas to the discontinuee with warranty

and

and dy without iſſue, this is a collaterall warranty to the iſſue in the taile, becauſe that the warranty deſcendeth vpon the iſſue, which cannot conuey himſelfe to the taile, by meane of his Vncle.

Alſo, if the tenant in the taile hath iſſue two daughters and die, and the elder daughter entreth into the whole, & thereof make a feoffement in fée with warranty, and after the elder daughter dieth without iſſue: In this caſe the ponger daughter is barred, as to the moitie, and as to the other halfe ſhe is not barred, for as to the moitie that belongeth to the ponger daughter, ſhe is barred, becauſe that as to the moity that belongeth to her, ſhé cannot conuey the diſcent by ỹ meanes of her elder ſiſter: And therefore as to the moitie, this is collateral warranty, but as to the other moitie which belongeth to her elder ſiſter, by the ſame elder ſiſter the warranty is no barre to the ponger ſiſter, becauſe that ſhé may conuey her deſcent as to that moity that belongeth to her elder, by the ſame elder ſiſter: And ſo as to that moity that belongeth to the elder ſiſter, the warranty as to that is lineall to the ponger ſiſter.

And note well, that as to him that demaundeth fée ſimple by any of his auncеſters, hé ſhall be barred by lineall warranty which diſcendeth vpon him, except he be reſtrained by ſome ſtatute, but he which demandeth fée taile by a writ of Formedon in the diſcender, ſhall not be barred by lineall warrantie, except hé

haue

haue enough by deſcent in Fée ſimple by the ſame anncéſter that made the warranty, but a collaterall warranty is a barre to him that demaundeth fée, and alſo to him that demandeth fée taile, without any other diſcent of fée ſimple, except in caſes that be reſtrained by the ſtatute, and other caſes for certaine cauſes as ſhall be ſaid hereafter.

Alſo, if Land bee giuen to a man and to his heires of his body begotten, the which taketh a wife, and hath iſſue a ſonne betweéne them, and the huſband diſcontinueth the taile in fée, and dyeth, and after the wife releaſeth to the diſcontinuée in fée with warrantie, and dyeth, and the warranty diſcendeth to the ſonne, this is a collaterall warranty. But if tenements be giuen to the huſband and the wife, and to the heires of their two bodies begotten, which haue iſſue a ſonne, & the huſband diſcontinueth the taile, and dyeth, & after the wife releaſeth with warranty & dyeth, this warranty is but a lineall warranty to the ſon, for the ſonne ſhal not be barred in this caſe to ſhew his writ of Formedon, except he haue enough by diſcent in Fée ſimple by his mother, becauſe ꝑ their iſſue in a writ of Formedon ought to conuey to him the right as heire to his father and to his mother of their two bodies begotten, by forme of the gift. And ſo in ſuch caſe the warranty of the father, and the warranty of the mother, be but as lineall warranties to the heire &c. And note well, & in euery caſe where a man demandeth

deth tenements in fée taile by a writ of Formedon, if any of the issues in the taile that had possession, or that hath possessiō make a warrantie &c. if he that sueth a writ of Formedon might by any possibility by matter that might be in deed, conuey to him, by him that made the warranty by the forme of the gift: This is a lineall warranty, and not collaterall.

Also, if a man haue issue three sonnes, and he giueth land to the eldest sonne, to haue and to holde to him and to the heires of his bodie begotten, and for default of such issue, the remainder to the middle sonne, to him, and to the heires of his body begotten, and for default of such issue, the remainder to the yongest sonne, and to his heires of his body begotten, in this case if the eldest sonne discontinue the taile in fée, and bind him, and his heires to warrantie, and die without issue, this is a collaterall warrantie to the middle sonne, and he shall bee barred to demaund the same land by force of the remainder, because that the remainder is his title, and his eldest brother is collaterall to the title which beginneth by force of the remainder.

In the same maner it is if the middle sonne, had the same land by force of the remainder, because that his eldest brother made no discontinuance, but dyeth without issue of his body, and after the middle sonne maketh a discontinuance with warranty &c. & dieth without issue, this is a collaterall warranty to the yongest

yongeſt Sonne, and alſo in this caſe if any of the ſaid ſonnes be diſſeiſed, and the father that made the gift releaſe to the Diſſeiſour all his right &c. with warrantie, this is a collaterall warrantie to the ſonne vpon whom the warranty diſcended, Cauſa qua ſupra. And ſo note well, that where a man that is collaterall to the title &c. releaſeth with warrantie, this is a collaterall warranty.

Alſo, if the Father giue Land to his elder Sonne, to haue and to hold to him and to his heires males of his body begotten, the remainder to the ſecond ſonne &c. if the eldeſt brother alien in fée with warranty &c. and hath iſſue female & dieth without iſſue male, this is not a collaterall warranty to the ſecond ſonne, nor ſhall not hurt him of his action by Formedon in the remainder, becauſe that the warrantie diſcendeth to the daughter of the eldeſt ſonne, and not to the ſecond Sonne. For euery warrantie that diſcendeth, diſcendeth to him that is heire vnto him which made the warrantie by the common Law &c.

Alſo, if Land be giuen to a man and to his heires males of his body begotten, and for default of ſuch iſſue the remainder thereof to his heires females of his body begotten, and after the donée in the taile maketh a feoffement in fée with warranty according, and hath iſſue a Sonne and a daughter, and dieth, this warranty is but a lineall warranty to the Sonne, to demaund by writ of Formedon in the deſcender,

cender. And it is but lineall to the daughter to demaund the same land by writ of Formedon in the remainder, if her brother die without heire male, because that she claimeth as heire female of the body of her father begotten. But in this case, if her brother in his life release to the discontinues with warranty &c. and after die without issue, this is a collaterall warrantie to the daughter, because that shee cannot convey to her the right that she had by force of the remainder by any meane of discent by her brother, and therefore the brother is collateral to the title of his sister, and therefore his warranty is collaterall &c.

Also, I haue heard say, that in the time of king Richard the second, there was a Justice in the common place dwelling in Kent, called Rickhil, that had issue diuers sonnes: and his intent was, that his eldest sonne should haue certaine lands to him and to his heires of his body begotten, and for default of issue, the remainder to his second sonne, and so forth, and so the third sonne &c. And because that he would that none of his sonnes should alien or make warrantie for to barre or to hurt the other that should be in the remainder &c. He caused to be made an Indenture to such effect, that is to say, that the Lands and tenements were giuen to his eldest Sonne vpon this condition, that if the eldest sonne altened in fee, or in fee taile &c. or any of his sons altened &c. that then their estate should cease & should bee

voyd,

void, and that then the ſaid Lands or Tenements immediately ſhould remaine to the ſecond ſonne, and to the heires of his body begotten, and that vpon the ſame condition, that is to ſay, if the ſecond ſonne alien &c. that then his eſtate ſhould ceaſe, and that then the ſame lands & tenements ſhould remaine to the third ſonne, and to the heires of his bodie begotten &c. the remainder to other of his ſonnes, and liuery of ſeiſin was made according. But it ſeemeth by reaſon that all ſuch remainders in the forme beforeſaid be void, and of no value, and that for three cauſes. One cauſe is, becauſe euery Remainder that beginneth by a deed, it behoueth that the remainder be in him to whom y remainder is tailed by force of the ſame deed when the liuery of ſeiſin is made to him that hath the franketenement. And ſuch Remainder was not to the ſecond Sonne at the time of Liuery of ſeiſin in caſe before ſaid &c.

The ſecond cauſe is, if the firſt Sonne alien the tenements in fee, then is the franketenement and the fee ſimple in the alienee and in none other, and if the donour had any reuerſion, by ſuch alienation the reuerſion is diſcontinued, then how by any reaſon may it bee that ſuch remainder ſhall beginne his being and his growing immediately after ſuch alienation made to a ſtraunger, that hath by the ſame alienation Franktenement, and Fee ſimple: and alſo if ſuch remainder ſhould

be

hée good, then might hee enter vpon the alienée where he had no maner of right before the alienatiõ, which should be inconuenient. The third cause is, when the condition is such, that if the eldest son alien &c. that his estate shall cease, or shall be voyd &c. then after such alienation &c. may the donor enter by force of such condition &c. as it seemeth, and so the donor or his heires in such case ought more soner to haue ye land, then the second sonne that hath no right before such alienation &c. and so it seemeth that such remainders in the case aforesaid be voyd.

Also at the common Law before the statute of Glouceſter, if the Tenaunt by curteſie had alienen in fée with warranty according, after his decease this was a bar to the heire &c. as it appeareth by the wordes of the same statute: But it is remedied by the same statute that the warranty of the tenaunt by the curteſie shall bee no barre to the heire, except hee haue enough by deſcent by the tenaunt by the curteſie, for before the said estatute that was a collaterall warranty to the hiere, because hee could not conuey any title of diſcent to the tenements by the Tenant by the curteſie, but onely by his mother or other of his auncestors &c. and that is the cause why it was collaterall warranty. But if a man enheritor, take a wife, which haue issue a sonne betweene them and the father dieth, & the sonne entreth into the land, and endoweth his mother, and after his mother alieneth that that shé hath in her

dower

dower to another in fee, with warranty accor-ding, and after dyeth, and the warranty de-scendeth to his sonne, now the sonne shall bee barred to demaund the same land, because of the said warranty, because that such collate-rall warranty of tenant in dower is not reme-died by any statute. The same Law is where tenant for terme of life, maketh an alienation with warranty &c. and dieth, and the warran-ty descendeth to him that had the reuersion, or the remainder &c. they shall be barred by such warranty &c.

Also, in the said case, if it so were that when the Tenant in Dower alieneth &c. the heire was within age, and also at that time that the warranty discendeth vnto him, he was within age, in this case the heire may after enter vpon the Alienee, notwithstanding the warranty discendeth &c. because that no laches shalbe ad-iudged in the heire within age, that hee entred not vpon the Alienee in the life of the tenant in Dower, but if the heire was within age at the time of the alienation, and after he came to full age in the life of the tenant in Dower, and so being of full age, he entred not in the life of the tenaunt in Dower, and after the tenaunt in Dower dyeth, there peraduenture the heire shall bee barred by such warranty, because it shall be accounted his folly that he being of ful age, entred not in the life of the Tenaunt in Dower &c.

Also, it is spoken in the end of the said Esta-

Estatute of Glouceſter, that ſpeaketh of the alienation with warranty made by the tenant by the curteſie in ſuch forme.

Alſo, in the ſame maner the heire of the woman after the death of his Father and mother ſhall not be barred of action, if he demaund the heritage, or the marriage of his mother by a writ of Entre that his Father alened in the time of his mother, wherof no fine is leuied in the kings court &c. And ſo by force of the ſame ſtatute, if the husband of the wife alien the heritage or mariage of his wife in fee with warrantie &c. by his deed in the Countrey, this is cleere law, that this warranty ſhall not barre the heire, except he haue enough by diſcent &c. But the doubt is, if that the husband alien the heritage of his wife by fine leuied in the kings courts with warranty &c. if this ſhall barre the heire without any diſcent in value &c. And as to that I will ſay heere certaine reaſons that I haue heard ſay in this matter. I heard my Maſter Sir Rich. Newton late chiefe Iuſtice of the common pleas ſay once in the ſame place, that ſuch warranty that the barron maketh by fine leuied in the Kings Court, ſhall bar the heire, though that hee haue nothing by deſcent, becauſe the ſtatute ſaith, wherof no fine is leuied in the Kings court &c. And ſo by his opinion, this warranty by fine &c. abideth yet a collaterall warrantie, as it was at the common law not remedied by the ſaid eſtatute, becauſe that the ſaid Eſtatute excepteth the-

alienation by fine with warranty. And some other haue said, & yet say the contrary, & this is their proofe, ỹ as by the same chapter of the said estatute is ordained, that the warranty of the Tenaunt by the curtesie shall not barre the heire, except he haue ynough by discent &c. though that the tenant by the curtesie leuie a fine of the same landes with warranty &c. as strongly as he can, yet this warranty shall not bar the heire, except he haue assets or ynough by discent &c. And I beleeue that this is law, and therefore they say, that it should be inconuenient to vnderstand the statute in such forme that a man that hath not but in the right of his wife, may by fine leuied by himselfe of the tenements that hee hath but in the right of his wife with warranty &c. barre the heire of the said tenements without discent of the fee simple &c. where the tenãt by the curtesie cannot do it. But they haue said, that the statute shall be vnderstood after this forme, that is to say, where the statute speaketh, whereof no fine is leuied in the Kings Court, that is to say, whereof no lawfull fine is rightfully leuied in the same kings Court, and that is wherof no fine of the husband and his wife is leuied in the kings court, for at the time of the making of the said statute, euerie estate of Landes or tenements that any man or woman had that should descend to his heire, was fee simple without condition, or vpon condition indeed or in Lawe. And because that such fine then

might

might lawfully haue bẽn leuied by the Husband and his wife, and that if the heires of the Husband warrant &c. such warrantie shall barre the heire &c.

Also, so they say that this is the vnderstanding of the said statute, for if the husband and the wife made a Feoffement in fee by deede in the Country, the heire after the decease of the husband & the wife shall haue a writ of Entre sur Cui in vita &c. notwithstãding the warrantie of the husband: Then if no such exception was made in the statute of the fine leuied &c. then the heire should haue the writ of Entre &c. notwithstanding the fine leuied by the husband and the wife, because that the words of the statute before the exception of the fine leuied &c. be generall &c. that is to say, that the heire of the woman after the death of the husband & the wife, shall not be barred of action, if he demand the heritage or the mariage of his mother by a writ of Entre, that his father aliened in the time of his mother, & so it should bee in that case of the statute, except such words were, that is to say, whereof no fine is leuied in the Kings Court: and so they say, that this is to be vnderstood, whereof no fine by the husband & the wife is leuied in the Kings Court, the which is lawfully leuied in such case: For if the Iustices haue knowledge ỹ a man that hath nothing but in the right of his wife, will leuie a fine in his name only, they will not, nor ought not to take such fine to bee leuied by the

husband onely, without naming the wife, therfore inquire of this matter.

Also, it is to wit, that in such words where the heire demaundeth the heritage or mariage of his Mother, this word (Or) is a disiunctiue, & is as much to say, if the heire demand the heritage of his mother, that is to be vnderstood the tenemẽts that his mother had in fee simple by discent, or by purchase, or if the heire demaund the mariage of his mother, that is to say, the Tenements that were giuen vnto his mother in frankmariage.

Also where it is moued in diuers dedes the words in Latine, Ego & hæred' mei &c. warrantizabimus, & imperpetuũ defendemus, it is to see what effect hath that word Defendemus in such deeds: & it seemeth that it hath not the effect of warrantize, nor comprehendeth any clause of warrantize, for if it should be so that it taketh effect, or cause of warrantize, then it should be put in some fines leuied in the Kings Court. And a man neuer saw that this word Defendemus was in a fine, but only this word Warrantizabimus, by which it seemeth that this Verbe Warrantizo maketh warranty, and is the cause of warrantize, and none other word in our Law.

Also, if Tenant in the taile bee seised of tenements deuisable by testament after the custome &c. and the Tenant in the taile alieneth the tenements to his brother in fee, and hath issue and dieth, and after his brother deuiseth by

by his testament ꝑ same tenements to another in fée, and bindeth him & his heires to warrãtize &c. & dyeth without issue, it seemeth that this warranty shall not barre the issue in the taile, if he will sue his writ of Formedon, because that the warranty discended not to the issue in the taile, insomuch as the vncle of the issue was not bound by force of the same warranty in his life: And the cause that hee could not warrant the Land in his life is, insomuch that the deuise could not take any execution or effect but after his decease, & insomuch that the vncle in his life was not held to warrãty, such warrantize may not discend from him to the issue in the tail &c. for nothing may discend from the auncester to his heire, but the same that was in the auncestor. Also a warrantie may not goe after the nature of tenements by custome, but only after the forme of ꝑ common law. For if tenãt in taile be seised of tenemẽts in borough English, where ꝑ custome is, that all tenements of the same Borough, ought to discend to the yongest son, & hee discontinueth the tail with warranty &c. and hath issue two sons & dieth seised of other lands & tenements in the same borough in fée simple to the value and more of the tenements tailed &c. yet the yongest sonne shall haue a Formedon of the tenements tailed, and shall not be barred by the warrantize of his Father though ynough to him descended in fée simple from the same Father after the custome, for this that the warrantize

rantize discendeth vpon the elder brother that is in full life &c. and not vpon the yongest son. In the same manner it is of collaterall warrantize made of such tenemēts wherof ꝯ warrantize discendeth to the elder son &c. this shall not barre the yonger son &c. In the same manner it is of tenements in the Shire of Kent, which is called Gauelkind, the which Tenements bee departible among the brethren &c. after the custome &c. if any such warranty bee made by their auncestors, such warranty descendeth all only to the heire that is heire by the common law, & not to all the heires which are heires of such tenements after the custome &c.

Also, if Tenant in the taile haue issue two daughters by diuers venters, and dyeth, and the daughters enter, and a stranger disseiseth them of the same Tenements, and one of the daughters releaseth by her deed to the disseisor all her right, and bindeth her and her heires to warrantize, and dieth without issue, in this case the sister that survyueth may well enter & put out the disseisor of all the tenements, for this that such warrantize is no discontinuance, nor collaterall warrantize to the sister that survyueth, for this that they be of halfe blood, and the one may not be heire to the other after the common Lawe. But otherwise it is where there bee daughters of tenants in the taile by one venter.

Also, if tenant in the taile let tenements to another for terme of life, the remainder to an

other

other in fée, & the collaterall auncester confirmeth the estate of the tenant for terme of life, and bindeth him and his heires to warrantize for terme of life of the tenant for terme of liue and dyeth, and the tenant in the taile hath issue & dyeth, now this issue is barred to aske the tenemẽts by writ of Formedon during the life of the tenaunt for terme of life, because of the collaterall descent vpon the issue in the tayle. But after the decease of the tenaunt for terme of life, the issue shall haue a Formedon &c. And vpon this I haue heard a reason, that this case shall proue another case: that is to say, If a man let his land to another, to haue & to hold vnto him & to his heires for terme of an others life, and the lessour dieth, liuing him to whose life, &c. and a stranger entreth into the lãd, that the heire of the lessée may put him out, for this that in the case next aforesaid, in so much that a man may binde him and his heires to warrant to the tenant for terme of life, all onely during the life of the tenaunt for terme of life, and the warrantize descendeth to the heire of him that made the warrantize, the which warrantize is no warrantize of inheritance, but all onely for terme of anothers life. By the same reason where tenements be let to a man, to haue and to hold to him and to his heires for term of anothers life, if the Father die, liuing him to whose life &c. his heire shall haue the tenements liuing him to whose life &c. For they haue said, that if a man grant

an annuitie to another, to haue and to take to him and to his heires for terme of an others life, if the graunte die &c. that after his heire shall haue the annuitie during the life of him to whose life &c. Quære de ista materia &c.

But where such a Lease or grant is made to a man and his heires for terme of yeres, in this case the heire of the lessee & the grauntee shall neuer haue after the death of the lessee or the grauntee that that is so letten or graunted, for this that it is a chattell reall, and all chatteis reals by the common law, shall come to the executors of the grantee, or the lessee, and not to the heire &c.

Also in some cases it may bee, that howbeit that a collateral warrantize be made in fee &c. yet such warrantize may be defeated and aniented. As the tenant in the taile discontinueth the taple in fee, & the discontinuee is disseised, & the brother of the tenant in the taile releaseth by his deed to the disseisor al his right &c. with warrantize in fee, and dieth without issue, and the tenant in the taile hath issue & dyeth, now the issue is barred of his action by force of the collaterall warrantie descending vpon him: but if after this the discontinuee enter vpō the disseisour, then may the heire in the taile haue his action of Formedon &c. for this that the warrantie is anientd & defeated. For when the warrantize is made vnto a man vpon any estate that then he had, if the estate be defeated, the warrantie is defeated.

In

In the same manner it is if the discontinuee make a feoffement in fee reserving to him certein rent, & for default of paymēt a reentry &c. & a collaterall auncestor releaseth to the feoffee that hath estate vpon condition &c. and dyeth without issue, though that the warranty descended vpon the issue in the tayle, yet if after the rent be behind, & the discontinuee entreth into the land &c. then the issue in the taile shall haue his recouerie by a writ of Formedon, for this that the warranty collateral is defeated. And so if any such collaterall warrantie bee pleaded against the issue in the taile in his action of Formedon, he may shew the matter as is aforesaid, how the warranty is defeated, and so he may well maintaine his action.

Also, if a tenant in the taile make a feoffemēt to his vncle, & after his vncle maketh a feoffement in fee with warrantize &c. to another, & after the feffee of the vncle enfeoffeth againe the vncle in fee, & after ꝑ vncle enfeoffeth a stranger in fee without warrantize, and dieth without issue, and the tenant in the taile will bring his writ of Formedon against the straunger that was ꝑ last feffee, & that by ꝑ vncle, in this case the issue shall neuer be barred by the warranty that was made by the vncle to ꝑ said first feffee of his vncle, for this that the said warrantize was defeated & anieted, for this that the vncle take againe to him as great estate of his said first feffee to whom the warrātize was made, as the same feoffee had of him: And the cause

why

his action, if the heire haue and plead the said release &c. he shall defeat the plee in barre &c. and many other causes and matters there bee whereby a man may defeat warranties.

And it is to wit, that in the same maner as collaterall warranty may be defeated by matter in deed, or in law, in the same manner may lineall warranty bee defeated &c. For if the heire in the taile bring a writ of Formedon, and a lineall warranty of his auncester inheritable by force of the taile be pleaded against him with that that assets to him descended of fee simple, by the same auncester that made the warranty, if the heire that is demandant may admull and defeate the warrantie, this sufficeth to him: for the discent of other tenements of fee simple make nothing to barre the heire without the warranty, &c.

FINIS.

¶ Here beginneth the Table of *this present Booke.*

NOw I haue made for thée my Sonne thrée Bookes. The first is of Estates that men haue of Lands or tenements, that is to say,

Of tenant in fée simple.
Tenant in fée taile.
Tenant in the Taile after possibity of issue extinct.
Tenant by the Curtesie of England.
Tenant in Dowser.
Tenant for terme of life.
Tenant for terme of yeares.
Tenant at will by the Common Law.
Tenant at will by the Custome of the manor.

¶ The Second Booke.

¶ The second Booke is, of Homage.
Fealty.
Escuage.
Knights service.
Socage.
Frankalmoigne, or Free almes.
Homage auncestrell.
Graund Serieanty.
Petie Sergeanty.
Tenure in Burgage.
Tenure in Villenage.
Of three manner of Rents, that is to say,
Rent service.

Rent

Rent charge and
Rent secke.

And these two small Bookes haue I made for thee, for to vnderstand better certain chapters of the ancient bookes of Tenures.

¶ The Third Booke.

Of The third Booke is, of Parceners.
Of Joyntenants.
Tenants in common.
Estate of Lands or tenements vpon Condition.
Of Descents that take away Entries.
Contmuall claime.
Releases.
Confirmations.
Attournements.
Remitters.
Of Warranties, that is to say:
Warranty lineall.
Warranty collaterall, and
Warranty that beginneth by disseisin.

the third Book

And know thou my Sonne, that I will not that thou beleeue, that all that that I haue said in the said Bookes is Law, for that will I not take vpon me, nor presume: But of those things that bee not Law, inquire and learne of my wise Masters learned in the Law.

Notwithstanding, though that certaine things that be noted and specified in the said

Bookes

Wookes bee not Lawe, yet such thinges shall make thee more apt and able to vnderstand, and learne the Arguments and the reasons of the Law: For by the arguments and the reasons in the Lawe, a man may more sooner come to the certaintie, and to the knowledge of the Law.

Lex plus laudatur, quando ratione probatur.

Lex plus laudatur, quando ratione

the Table.

FINIS.

FINIS.